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No. 98-1255

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In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

ABEL MARTINEZ-SALAZAR

*ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

JOINT APPENDIX

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**PETITION FOR CERTIORARI FILED: FEBRUARY 4, 1999
CERTIORARI GRANTED: JUNE 21, 1999**

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA (PHOENIX)

Docket No. 93-CR-284-ALL

UNITED STATES OF AMERICA

v.

ABEL MARTINEZ SALAZAR, TOMAS VELEZ-GILES,
CELSO ORGANISTA-DORANTES

DOCKET ENTRIES

DATE	DOCKET NUMBERS	DOCKET ENTRY
7/27/93	—	DEFENDANT Abel Martinez Salazar, Tomas Velez-Giles, Celso Organista-Dorantes arrested. [2:93-m -210] (ph) [Entry date 07/29/93]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
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7/28/93 2 (FILED: 7/28/93) MINUTES: Judge: SMM Interpreter: VanDuzer and Velasco first appearance of Abel Martinez Salazar, Tomas Velez-Giles, Celso Organista-Dorantes; informed of rights, charges, etc.;, dft Abel Martinez Salazar, Tomas Velez-Giles, Celso Organista-Dorantes appears with counsel Bernardo Mario Garcia, Richard L Juarez, Gregory Anthony Bartolomei, Interpreter Spanish for all three defendants, preliminary exam set 8/3/93 at 10:00 detention hearing set 8/3/93 at 10:00 before Mag Judge Morton Sitver as to all three defendants and Dfts temp ordered detained pending hrg of detention [2:93-m -210] (ph) [Entry date 07/29/93] [Edit date 07/29/93]

7/28/93 3 CJA Form 23 financial affidavit by Celso Organista-Dorantes [2:93-m -210] (ph) [Entry date 07/29/93] [Edit date 07/29/93]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
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7/28/93 4 CJA Form 23 financial affidavit by Abel Martinez Salazar [2:93-m -210] (ph) [Entry date 07/29/93] [Edit date 07/29/93]

7/28/93 5 CJA Form 23 financial affidavit by Tomas Velez-Giles [2:93-m -210] (ph) [Entry date 07/29/93] [Edit date 07/29/93]

7/28/93 1 COMPLAINT filed as to Abel Martinez Salazar, Tomas Velez-Giles, Celso Organista-Dorantes ; Case assigned to Mag Judge Michael Mignella Jr signed by USDC Judge McNamee [2:93-m -210] (ph) [Entry date 07/29/93]

7/28/93 6 CJA Form 20 copy 4 as to Abel Martinez Salazar appointing Bernardo Garcia ; ordered by Judge Stephen M. McNamee [2:93-m -210] (ph) [Entry date 07/29/93] [Edit date 07/30/93]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
7/28/93	7	CJA Form 20 copy 4 as to Tomas Velez-Giles appointing , Richard Juarez ; ordered by Judge Stephen M. McNamee [2:93-m -210] (ph) [Entry date 07/29/93] [Edit date 07/30/93]
7/28/93	8	CJA Form 20 copy 4 as to Celso Organista-Dorantes appointing Gregory Bartolomei ; ordered by Judge Stephen M. McNamee [2:93-m -210] (ph) [Entry date 07/29/93] [Edit date 07/30/93]
8/3/93	9	(FILED: 8/4/93) MINUTES: Interpreter Velasco/Van Duzer Judge: MS Abel Martinez Salazar pres with Bernardo Garcia; Velez-Giles present with Richard Juarez; Organista-Dorantes present with Richard Juarez; preliminary exam held, prob cause found as to all dfts. detention hearing held. All dfts detained as flight and danger. before Mag Judge Morton Sitver [2:93-m -210] (ce) [Entry date 08/04/93] [Edit date 08/04/93]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
8/24/93	10	INDICTMENT by USA attorney Vincent Quill Kirby. Counts filed against Abel Martinez Salazar (1) count(s) 1, 2, 3, Tomas Velez-Giles (2) count(s) 1, 2, 3, Celso Organista-Dorantes (3) count(s) 1, 2, 3 (cn) [Entry date 08/25/93] [Edit date 08/25/93]
8/25/93	11	NOTICE issued ; arraignment set for 10:45 9/1/93 for Abel Martinez Salazar before Mag Judge Michael Mignella Jr (cn) [Entry date 08/25/93]
8/25/93	12	NOTICE issued ; arraignment set for 10:45 9/1/93 for Tomas Velez-Giles before Mag Judge Michael Mignella Jr (cn) [Entry date 08/25/93]
8/25/93	13	NOTICE issued ; arraignment set for 10:45 9/1/93 for Celso Organista-Dorantes before Mag Judge Michael Mignella Jr (cn) [Entry date 08/25/93]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
8/26/93	14	(FILED: 08-26-93) MINUTES: Judge: MM. Arraignment hearing for dft Celso Organista-Durante is reset to 09-01-93 at 11:15 am before Mag Judge Mignella at request for defense counsel. (aj) [Entry date 08/27/93]
8/30/93	15	ORDER of detention pending trial by Mag Judge Morton Sitver as to Tomas Velez-Giles (re: detention order [15-1] (ls) [Entry date 08/30/93]
8/30/93	16	ORDER of detention pending trial by Mag Judge Morton Sitver as to Abel Martinez Salazar (re: detention order [16-1] (cn) [Entry date 08/31/93]
8/31/93	17	ORDER of detention pending trial by Mag Judge Morton Sitver as to Celso Organista-Dorantes (re: detention order [17-1] (cn) [Entry date 08/31/93]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
9/1/93	18	(FILED: 9/1/93) MINUTES: Judge: MM Interpreter: Louis Velasco dft Abel Martinez Salazar arraigned; not guilty plea entered; Attorney Bernardo Garcia present;, dft oral mtn to have 30 days for pretrial motions grted, pretrial motions due 10/1/93 trial set for 10/12/93 at 9:00 before Judge Earl H. Carroll (seal) [Entry date 09/01/93]
9/1/93	19	(FILED: 9/1/93) MINUTES: Judge: MM dft Tomas Velez-Giles arraigned; not guilty plea entered; Attorney Richard L Juarez present;, dft oral mtn to have 30 days for pretrial mtgs, grted, pretrial motions due 10/1/93 trial set for 10/12/93 at 9:00 before Judge Earl H. Carroll (seal) [Entry date 09/01/93]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
9/1/93	20	(FILED: 9/1/93) MINUTES: Judge: MM dft Celso Organista-Dorantes arraigned; not guilty plea entered; Attorney Gregory Bartolomei present;, dft oral mtn to have 30 days for pretrial mtgs is grted, pretrial motions due 10/1/93 trial set for 10/12/93 at 9:00 before Judge Earl H. Carroll (seal) [Entry date 09/01/93]
9/7/93	21	MOTION to seal application for appt of an investigator by Celso Organista-Dorantes [21-1] (cn) [Entry date 09/08/93]
9/7/93	23	MOTION to preserve Gvt agent's rough notes by Celso Organista-Dorantes [23-1] (cn) [Entry date 09/09/93]
9/20/93	26	MOTION to continue trial [26-1], for extension of time to file pretrial motions [26-2] by Celso Organista-Dorantes (cn) [Entry date 09/21/93]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
9/23/93	27	ORDER by Judge Earl H. Carroll granting motion to continue trial [26-1], granting motion for extension of time to file pretrial motions [26-2] pretrial motions extended to 10/12/93 for dft Organista-Dorantes; trial continued to 11/16/93 at 9:00 for all dfts before Judge Earl H. Carroll, excludable delay interest of justice started (cn) [Entry date 09/28/93]
9/29/93	28	MOTION to continue trial [28-1] by Celso Organista-Dorantes (cn) [Entry date 09/30/93]
10/12/93	29	MOTION in limine re: admissibility of declarations by co-conspirators and request for James hrg [29-1] by Celso Organista-Dorantes (cn) [Entry date 10/14/93]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
10/12/93	30	MOTION for discovery re: statements attributed to dft pursuant to Rule 801(d)(2)(E) and mtn for James hrg [30-1] by Celso Organista-Dorantes (cn) [Entry date 10/14/93]
10/12/93	31	MOTION to suppress statements [31-1] by Celso Organista-Dorantes (cn) [Entry date 10/14/93]
10/12/93	32	MOTION to sever dfts [32-1] by Celso Organista-Dorantes (cn) [Entry date 10/14/93]
10/13/93	33	NOTICE of hearing setting mtns to sever dfts [32-1], to suppress statements [31-1], for discovery re: statements attributed to dft pursuant to Rule 801(d)(2)(E) and mtn for James hrg [30-1] & in limine re: admissibility of declarations by co-conspirators and request for James hrg [29-1] for hearing set for 3:00 11/1/93 for Celso Organista-Dorantes before Judge Earl H. Carroll (cn) [Entry date 10/14/93]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
11/8/93	36	MOTION for acceleration of hearings on mtn for discovery of statements, mtn in limine, mtn to suppress statements and mtn to sever [36-1] by Celso Organista-Dorantes (cn) [Entry date 11/09/93]
11/9/93	—	ORAL MOTION to continue trial [0-0] by Tomas Velez-Giles (cn) [Entry date 11/15/93]
11/9/93	37	(FILED: 11/10/93) MINUTES: before Judge Earl H. Carroll Ct Rptr: B Brittan Pretrial conference held; granting oral motion to continue trial [0-0] (cnsl to submit a written mtn & order finding excludable time); trial continued to 11/30/93 at 9:00. Setting motion to suppress statements [31-1] for hearing at 4:00 on 11/17/93 for Celso Organista-Dorantes before Judge Earl H. Carroll (cn) [Entry date 11/15/93]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
11/10/93	38	NOTICE of confession, admissions and statements purs. to Local Rule 86 as to Celso Organista-Dorantes (cn) [Entry date 11/15/93]
11/15/93	39	RESPONSE by pla USA to motion to suppress statements [31-1] by dft Organista-Dorantes (cn) [Entry date 11/18/93]
11/16/93	40	RESPONSE by pla USA to motion to sever dfts [32-1] by dft Organista-Dorantes (cn) [Entry date 11/18/93]
11/16/93	41	RESPONSE by pla USA to motion for discovery re: statements attributed to dft pursuant to Rule 801(d)(2)(E) and mtn for James hrg [30-1] (cn) [Entry date 11/18/93]
11/16/93	42	RESPONSE by pla USA to motion in limine re: admissibility of declarations by co-conspirators and request for James hrg [29-1] (cn) [Entry date 11/18/93]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
11/16/93	43	RESPONSE by pla USA to motion to preserve Gvt agent's rough notes by Celso Organista-Dorantes [23-1] (cn) [Entry date 11/18/93]
11/17/93	44	(FILED: 11/18/93) MINUTES: ; possible chg of plea hearing set for 9:00 11/23/93 for Tomas Velez-Giles before Judge Earl H. Carroll (cn) [Entry date 11/22/93]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
11/17/93	45	(FILED: 11/18/93) MINUTES: before Judge Earl H. Carroll Ct Rptr: B Brittan granting motion for acceleration of hearings on mtns [36-1], taking under advisement on 11/17/93 the motion to sever dfts [32-1], taking under advisement on 11/17/93 the motion to preserve Gvt agent's rough notes by Celso Organista-Dorantes [23-1], denying motion for discovery re: statements attributed to dft pursuant to Rule 801(d)(2)(E) and mtn for James hrg [30-1], re motion to suppress statements [31-1] ; hearing reset for 10:00 11/18/93 for Celso Organista-Dorantes before Judge Earl H. Carroll excludable delay XE stopped (cn) [Entry date 11/22/93]
11/18/93	46	(FILED: 11/18/93) MINUTES: before Judge Earl H. Carroll Ct Rptr: B Brittan Interpreter: Louis Velasco denying motion to suppress statements [31-1] (cn) [Entry date 11/22/93]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
11/18/93	47	ORDER by Judge Earl H. Carroll granting motion to continue trial [28-1] ; trial set for 9:00 11/30/93 for Abel Martinez Salazar, for Tomas Velez-Giles, for Celso Organista-Dorantes before Judge Earl H. Carroll, excludable delay interest of justice started (cn) [Entry date 11/22/93]
11/18/93	48	ORDER by Judge Earl H. Carroll denying motion to sever dfts [32-1] excludable delay XG stopped (cn) [Entry date 11/22/93]
11/18/93	49	ORDER by Judge Earl H. Carroll granting motion to preserve Gvt agent's rough notes by Celso Organista-Dorantes [23-1] excludable delay XG stopped (cn) [Entry date 11/22/93]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
11/18/93	50	ORDER by Judge Earl H. Carroll denying motion in limine re: admissibility of declarations by co-conspirators and request for James hrg [29-1] (cn) [Entry date 11/22/93]
11/19/93	51	JURY Voir Dire requested by Celso Organista-Dorantes (cn) [Entry date 11/22/93]
11/23/93	52	(FILED: 11-23-93) MINUTES: before Judge Carroll. Ct Rptr: Bridget Brittan. Interpreter: Louis Velasco. Possible chg of plea hearing held. Tomas Velez-Giles (2) count 1 enters a plea of guilty. Plea agreement lodged as to dft Velez-Giles. Pretrial motions & trial date vacated; Sentencing set for 1:00 2/9/94 for dft Velez-Giles before Judge Carroll. Counts 2 and 3 to be dismissed at sentencing. (aj) [Entry date 11/24/93]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
11/23/93	53	(FILED: 11/23/93) MINUTES: before Judge Carroll. Ct Rptr: Bridget Brittan. Status hearing held on trial setting of 11-30-93. Discussion held; court adjourns. (aj) [Entry date 11/24/93]
11/23/93	54	Requested JURY instructions by USA (aj) [Entry date 11/24/93]
11/23/93	55	Requested JURY voir dire questions by USA (aj) [Entry date 11/24/93]
11/24/93	56	JURY Voir Dire requested by Abel Martinez Salazar (cn) [Entry date 11/29/93]
11/26/93	57	PROPOSED FINAL JURY instructions by Celso Organista-Dorantes (cn) [Entry date 11/29/93]
12/6/93	—	ORAL MOTION for appointment of different counsel [0-0] by Abel Martinez Salazar (cn) [Entry date 12/07/93]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
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12/6/93 58 (FILED: 12/6/93) MINUTES: before Judge Earl H. Carroll Ct Rptr: Vickie Reger Interpreter: Louis Velasco; pretrial conference held, denying motion for appointment of different counsel [0-0] ; trial set for 9:00 12/7/93 for Abel Martinez Salazar, for Celso Organista-Dorantes before Judge Earl H. Carroll (cn) [Entry date 12/07/93]

12/7/93 — ORAL MOTION re: Batson challenge [0-0] by Celso Organista-Dorantes (cn) [Entry date 12/08/93]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
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12/7/93 59 (FILED: 12/8/93) MINUTES: before Judge Earl H. Carroll Ct Rptr: Vickie Reger Interpreter: Louis Velasco & Lita Van Duzer granting motion re: Batson challenge [0-0] by dft Organista-Dorantes voir dire begins as to Abel Martinez Salazar, Celso Organista-Dorantes, jury impaneled Abel Martinez Salazar (1) count(s) 1, 2, 3, Celso Organista-Dorantes (3) count(s) 1, 2, 3, pretrial motions vacated trial begins before Judge Earl H. Carroll (cn) [Entry date 12/08/93]

12/9/93 60 ORDER by Judge Earl H. Carroll that counsel for dft Salazar be allowed to meet with his client after 10 pm on 12/9/93 and before 8 am on 12/10/93 (re: order [60-1] (cn) [Entry date 12/10/93]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
12/9/93	61	STIPULATION between Abel Martinez Salazar, Celso Organista-Dorantes, USA re: exhibit 3 and exhibit 5A (cn) [Entry date 12/10/93]
12/9/93	—	ORAL MOTION to strike juror #10 [0-0] by Abel Martinez Salazar (cn) [Entry date 12/13/93]
12/9/93	—	ORAL MOTION for mistrial [0-0] by Abel Martinez Salazar (cn) [Entry date 12/13/93]
12/9/93	—	ORAL MOTION that transcript for exhibit 11(b) be prepared with english subtitles [0-0] by Abel Martinez Salazar (cn) [Entry date 12/13/93]
12/9/93	—	ORAL MOTION for outstanding Jenkes material to be turned over to dfns [0-0] by Celso Organista-Dorantes (cn) [Entry date 12/13/93]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
12/9/93	—	ORAL MOTION for production of any report for fingerprint on the gun [0-0] by Abel Martinez Salazar (cn) [Entry date 12/13/93]
12/9/93	—	ORAL MOTION to amend witness list to add Sergio Rosales [0-0] by Abel Martinez Salazar (cn) [Entry date 12/13/93]
12/9/93	—	ORAL MOTION for judgment of acquittal [0-0] by Celso Organista-Dorantes (cn) [Entry date 12/13/93]
12/9/93	62	MEMORANDUM in support of motion for judgment of acquittal [0-0] by dft Organista-Dorantes (cn) [Entry date 12/13/93]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
12/9/93	63	(FILED: 12/13/93) MINUTES: before Judge Earl H. Carroll Ct Rptr: Vickie Reger Interpreter: Lita Van Duzer & Louis Velasco denying oral motion to strike juror #10 [0-0], denying oral motion for mistrial [0-0], granting oral motion that transcript for exhibit 11(b) be prepared with english subtitles [0-0],, granting oral motion for production of any report for fingerprint on the gun [0-0], granting oral motion to amend witness list to add Sergio Rosales [0-0], denying oral motion for judgment of acquittal [0-0] denying motion to sever dfts [32-1] (cn) [Entry date 12/13/93]
12/10/93	64	PROPOSED SUPPLEMENTAL JURY instructions by Celso Organista-Dorantes (cn) [Entry date 12/13/93]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
12/10/93	—	ORAL MOTION recess to interview interpreter Sergio Rosales [0-0] by Abel Martinez Salazar (cn) [Entry date 12/13/93]
12/10/93	—	ORAL MOTION to reopen case & allow Anna Ugarte Barua to testify [0-0] by USA as to Abel Martinez Salazar, Celso Organista-Dorantes (cn) [Entry date 12/13/93]
12/10/93	—	ORAL MOTION re-urging previous mtns [0-0] by Abel Martinez Salazar, Celso Organista-Dorantes (cn) [Entry date 12/13/93]
12/10/93	—	ORAL MOTION for judgment of acquittal [0-0] by Abel Martinez Salazar (cn) [Entry date 12/13/93]
12/10/93	—	ORAL MOTION renewing all previous mtns, including the mtn to sever and Rule 29 mtn for judgment of acquittal [0-0] by Celso Organista-Dorantes (cn) [Entry date 12/13/93]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
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12/10/93 — ORAL MOTION for mistrial [0-0] by Abel Martinez Salazar (cn) [Entry date 12/13/93]

12/10/93 65 (FILED: 12/13/93) MINUTES: before Judge Earl H. Carroll Ct Rptr: Vickie Reger Interpreter: Lita Van Duzer & Louis Velasco denying oral motion to recess to interview interpreter Sergio Rosales [0-0], granting oral motion by gvt to reopen case & allow Anna Ugarte Barua to testify [0-0], denying oral motion re-urging previous mtgs [0-0], denying oral motion for judgment of acquittal [0-0], denying oral motion renewing all previous mtgs, including the mtn to sever and Rule 29 mtn for judgment of acquittal [0-0] (cn) [Entry date 12/13/93]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
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12/13/93 66 (FILED: 12-13-93) MINUTES: before Judge Carroll. Ct Rptr: Vickie Reger. Interpreter: Lita Van Duzer and Velasco. JURY TRIAL continues. Abel Martinez Salazar (1) counts 1, 2, 3 found guilty. Sentencing set for 1:30 3/7/94 for Abel Salazar before Judge Carroll. Acquittal of Celso Organista-Dorantes (3) count(s) 1-3. Jury finds dft dft Organista-Dorantes NOT GUILTY as to Counts 1-3. Defendant dismissed from case. (aj) [Entry date 12/14/93]

12/13/93 67 JURY verdict of not guilty as to Celso Organista-Dorantes (3) counts 1, 2, 3 (aj) [Entry date 12/14/93]

12/13/93 68 JURY verdict of guilty as to Abel Martinez Salazar (1) counts 1, 2, 3 (aj) [Entry date 12/14/93]

12/13/93 69 JURY instructions (aj) [Entry date 12/14/93]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
12/13/93	70	WITNESS list as to dft Celso Organista-Dorantes (aj) [Entry date 12/14/93]
12/13/93	71	WITNESS list as to dft Abel Martinez Salazar (aj) [Entry date 12/14/93]
12/13/93	72	EXHIBIT list of Celso Organista-Dorantes (aj) [Entry date 12/14/93]
12/13/93	73	JURY list re Abel Martinez Salazar, Celso Organista-Dorantes (aj) [Entry date 12/14/93]
12/13/93	74	JUDGMENT of acquittal by Judge Earl H. Carroll for Celso Organista-Dorantes (re: judgment [74-1] (en) [Entry date 12/15/93]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
12/17/93	75	ORDER by Judge Earl H. Carroll that exhibits marked and/or admitted in this case are to be returned to cnsl/agents of record who are directed to retain custody of them until the case has been completely terminated, including all appeals (re: order [75-1] (en) [Entry date 12/20/93]
1/28/94	76	PAYMENT voucher by Judge Earl H. Carroll as to Abel Martinez Salazar for CJA atty Bernardo Mario Garcia (mm) [Entry date 02/01/94]
2/4/94	77	SENTENCING Memorandum filed by Tomas Velez-Giles (mm) [Entry date 02/09/94]
2/7/94	78	PAYMENT voucher by Judge Carroll as to Celso Organista-Dorantes for CJA Benny Lucero (aj) [Entry date 02/09/94]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
2/9/94	79	(FILED: 2/11/94 MINUTES: before Judge Earl H. Carroll Ct Rptr: Bridget Brittan Interpreter: Lita Van Duzer sentencing for Tomas Velez-Giles before Judge Earl H. Carroll (ls) [Entry date 02/15/94]
2/11/94	80	PLEA agreement filed as to Tomas Velez-Giles (ls) [Entry date 02/15/94]
2/11/94	81	STATEMENT of reasons for imposing sentence as to Tomas Velez-Giles by Judge Earl H. Carroll (ls) [Entry date 02/15/94]
2/11/94	82	PRESENTENCE report as to Tomas Velez-Giles (original is sealed and held in probation office) (ls) [Entry date 02/15/94]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
2/11/94	83	JUDGMENT and Commitment issued as to Tomas Velez-Giles Tomas Velez-Giles (2) count(s) 2, 3 . Dismissed on gvt motion, sentencing for Tomas Velez-Giles (2) count(s) 1. CBOP for SIXTY (60) MONTHS, followed by 48 months supervised release. S/A: \$50 ; ordered by Judge Earl H. Carroll (ls) [Entry date 02/15/94]
2/18/94	85	NOTICE OF APPEAL by dft Tomas Velez-Giles from District Court appealing sentence (cc: 9CCA/All Counsel) (seal) [Entry date 02/25/94]
2/23/94	84	PAYMENT voucher by Judge Earl H. Carroll as to Celso Organista-Dorantes for CJA atty Gregory Anthony Bartolomei (mm) [Entry date 02/25/94]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
2/28/94	86	ORDER by Judge Earl H. Carroll that a copy of the Notice to File an Appeal filed by dft Tomas Velez-Giles be sent with this order to Atty Richard Juarez (re: order [86-1] (mm) [Entry date 2/28/94]
2/28/94	87	ORDER for 9CCA Time Schedule as to Tomas Velez-Giles [Entry date 02/28/94]
3/4/94	88	MOTION (Letter from dft) to reduce sentence (to rescind sentence due to illness of dft) [88-1] by Tomas Velez-Giles (mm) [Entry date 03/09/94]
3/7/94	90	(FILED: 3/9/94) MINUTES: before Judge Earl H. Carroll Ct Rptr: Bridget Brittan Interpreter: Lita Van Duzer sentencing for Abel Salazar before Judge Earl H. Carroll (ls) [Entry date 03/10/94]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
3/9/94	89	ORDER by Judge Earl H. Carroll denying motion to reduce sentence (to rescind sentence due to illness of dft) [88-1] by Tomas Velez-Giles (mm) [Entry date 03/09/94]
3/9/94	91	STATEMENT of reasons for imposing sentence as to Abel Martinez Salazar by Judge Earl H. Carroll (ls) [Entry date 03/10/94]
3/9/94	92	PRESENTENCE report as to Abel Martinez Salazar (original is sealed and held in probation office) (ls) [Entry date 03/10/94]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
3/9/94	93	JUDGMENT and Commitment issued as to Abel Martinez Salazar sentencing for Abel Martinez Salazar (1) count(s) 1, 2 , 3 . CBOP for SIXTY-THREE (63) MONTHS on Counts I and II, to be served concurrently. A term of 48 months supervised release on Counts I and II to be served concurrently. As to Count III, CBOP for SIXTY (60) MONTHS, to be served consecutively with Counts I and II. A term of 36 months supervised release is imposed, to be served consecutively with the term of supervised released imposed in Counts I and II. S/A: \$150., Case closed.; ordered by Judge Earl H. Carroll (ls) [Entry date 03/10/94]
3/14/94	94	NOTICE OF APPEAL by dft Abel Martinez Salazar from District Court appealing sentence (cc: 9CCA/All Counsel) (ls) [Entry date 03/15/94]

<u>DATE</u>	<u>DOCKET NUMBERS</u>	<u>DOCKET ENTRY</u>
3/16/94	—	Notification by 9CCA of Appellate Docket Number 94-10122 as to Tomas Velez-Giles (ls) [Entry date 03/16/94]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 94-10158

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

ABEL MARTINEZ SALAZAR, DEFENDANT-APPELLANT

DOCKET ENTRIES

DATE	DOCKET ENTRY
1994	
3/24/94	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. Filed in D.C. on 3/14/94; setting schedule as follows: transcript shall be ordered by 4/4/94 for Abel Martinez Salazar; Fee payment due 4/7/94; transcript shall be filed by 5/4/94; appellants' briefs, excerpts due by 6/13/94 for Abel Martinez Salazar; appellees' brief due 7/13/94 for USA; appellants' reply brief due by 7/27/94 for Abel Martinez Salazar. (RT required: yes) (Sentence imp 63mo) [94-10158] (vt) [94-10158]

DATE	DOCKET ENTRY
6/7/94	Filed certificate of record on appeal RT filed in DC 06/02/94 [94-10158] (tm) [94-10158]
6/13/94	14 day oral extension by phone of time to file Appellant in 94-10158 brief. [94-10158] appellants' brief due 6/27/94; appellees' brief due 7/27/94; optional reply brief is due 14 days from service of the answering brief. (mag) [94-10158]
6/29/94	Received Appellant Abel Martinez Salazar in 94-10158's brief in 15 copies 15 pages (Informal: no) fee not paid: notified counsel. Served on 6/27/94 [94-10158] respnse to brief deficiency notice due 7/13/94; (vt) [94-10158]
7/28/94	Received orig. 15 copies USA in 94-10158's brief of 16 pages; served on 7/26/94 deficient: appellant's brief not filed [94-10158] (tm) [94-10158]
8/12/94	Received notification from District Court (by Phone) of payment of docket fee (date paid: 04/05/94) [94-10158] (tm) [94-10158]

<u>DATE</u>	<u>DOCKET ENTRY</u>
8/12/94	Filed original and 15 copies Appellant Abel Martinez Salazar's opening brief (Informal: n) 15 pages and five excerpts of record in 1 volumes; served on 6/27/94 [94-10158] (tm) [94-10158]
8/12/94	Filed original and 15 copies appellee USA in 94-10158's 16 pages brief, 1 Exc. vols: ; served on 7/26/94 [94-10158] (tm) [94-10158]
8/12/94	Filed original and 15 copies Abel Martinez Salazar's reply brief, (Informal: n(9 pages; served on 8/10/94 [94-10158] (tm) [94-10158]
9/8/94	Filed, as of 06/07/94 , certified record on appeal in 8 Vols.(total): 1 Clerks Rec 7 RTs (orig)NOTE: SAME RECORD FOR 94-10122 [94-10158] [94-10158] (tm) [94-10158]
9/30/94	Calendar check performed [94-10122, 94-10158] (th) [94-10122 94-10158]
10/19/94	Calendar materials being prepared. [94-10122, 94-10158] [94-10122, 94-10158] (dd) [94-10122 94-10158]

<u>DATE</u>	<u>DOCKET ENTRY</u>
10/26/94	CALENDARED: San Francisco Dec. 16, 1994 9:00 a.m. Courtroom 2 [94-10122, 94-10158] (dd) [94-10122 94-10158]
12/5/94	Order filed: The court is informed of Defendant Tomas Velez-Giles' death; his appeal is dismissed as moot. This order does not affect the pendency of USA v. Martinez-Salazar, 94-10158, the co-defendant's appeal. (Procedurally Terminated After Other Judicial Action; Dismissed/ Other. Thomas TANG, author; Stephen R. REINHARDT; Pamela A. RYMER.) ([94-10122] (dg) [94-10122]
12/16/94	ARGUED AND SUBMITTED TO Thomas TANG, Stephen R. REINHARDT, Pamela A. RYMER [94-10158] (crw) [94-10158]
	<u>1995</u>
4/24/95	Sent copy of order of 04/24/95 (Copy of order to D.C. and Frederick F. Kay, FPD) [94-10158] (tm) [94-10158]

<u>DATE</u>	<u>DOCKET ENTRY</u>
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4/24/95 Filed order (Thomas TANG, Stephen R. REINHARDT, Pamela A. RYMER): Because defendant-appellant's counsel adopted an "Anders position" at oral argument as to whether a constitutional violation resulted from the d.c.'s refusal to dismiss Juror Gilbert for cause, we have applied procedures set forth in Anders v. State of CA. The court on its own motion relieves defendant-appellant's counsel. New counsel shall be appointed by separate order. New counsel shall submit a supplemental brief addressing the following questions . . . The supplemental brief shall be no more than 15 pages in length and shall be submitted within 21 days of the date of appointment of new counsel. The government shall then submit a brief in response of no more than 15 pages within 14 days of the date on which appellant's supplemental brief is due. The clerk shall serve a copy of this order on Frederick F. Kay, who will locate counsel to be appointed. The d.c. shall provide this court with the name and address of such counsel within 14 days of the appointment. Submission is ordered vacated. (SEE CASEFILES FOR COMPLETE TEXT) [94-10158] (tm) [94-10158]

<u>DATE</u>	<u>DOCKET ENTRY</u>
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5/22/95 Filed original and 15 copies Appellant Abel Martinez Salazar's supplemental brief of 14 pages, served on 5/18/95 (PANEL) [94-10158] (tm) [94-10158]

6/5/95 Filed original and 15 copies Appellee's supplemental brief of 13 pages, served on 6/1/95 (PANEL) [94-10158] (tm) [94-10158]

6/29/95 Filed USA's additional citations, served on 6/27/95 (PANEL) [94-10158] (tm) [94-10158]

8/3/95 FILED CERTIFIED RECORD ON APPEAL IN 01 VOLS.(total): 01 CLERKS REC; 0 RTs (ORIG) [94-10158] [94-10158] (ot) [94-10158]

8/4/95 Filed order (Deputy Clerk: CAC) Due to the death of Judge Tang, Judge Hawkins has been drawn to replace him on the pnl. [94-10158] (ot) [94-10158]

8/11/95 Filed Appellant Abel Martinez Salazar's motion to appear and argue merits of the case; served on 8/8/95 (PANEL) [94-10158] (tm) [94-10158]

<u>DATE</u>	<u>DOCKET ENTRY</u>
8/16/95	Filed USA's additional citations, served on 8/14/95 (PANEL) [94-10158] (tm) [94-10158]
<u>1996</u>	
6/17/96	Filed Abel Martinez Salazar's additional citations, served on 6/13/96 ***RECORDS FOR MERITS PANEL*** [94-10158] (tm) [94-10158]
10/7/96	Filed Abel Martinez Salazar in 94-10158 additional citations, served on 10/4/96 PANEL [94-10158] (em) [94-10158]
10/18/96	Filed order (Deputy Clerk: GB) Oral argument in the above-entitled case shall be heard in SF on 11/21/96 at 10:00 am in Ctrm #1. (parties phoned) [94-10158] (em) [94-10158]
10/18/96	CALENDARED: San Francisco Nov. 21, 1996 10:00 a.m. Courtroom 1 [94-10158] (mw) [94-10158]
11/21/96	ARGUED AND SUBMITTED TO Stephen R. REINHARDT, Pamela A. RYMER (by telephone), Michael D. HAWKINS [94-10158] (mlm) [94-10158]

<u>DATE</u>	<u>DOCKET ENTRY</u>
<u>1997</u>	
5/1/97	Filed order (Stephen R. REINHARDT, Pamela A. RYMER, Michael D. HAWKINS): The parties are requested to file simultaneous briefs on their respective position regarding Bailey v. US, 116 S. Ct. 501 (1995). The briefs shall consist of not more than 10 pages each and shall be filed within 21 days of the filed date of this order (due 5/21/97) Submission shall be vacated until further order from this court. [94-10158] (tm) [94-10158]
5/23/97	Filed original and 15 copies Appellant Abel Martinez Salazar's supplemental brief of 10 pages, served on 5/19/97 (PANEL) [94-10158] (tm) [94-10158]
5/27/97	Filed original and 15 copies Appellee USA's supplemental brief of 10 pages, served on 5/22/97 (PANEL) [94-10158] (tm) [94-10158]
7/9/97	Received Appellant Abel Martinez Salazar's letter dated 07/08/97 re: status of appeal. (Mailed copy of the docket rpt. to him. [94-10158] (tm) [94-10158]

<u>DATE</u>	<u>DOCKET ENTRY</u>
7/17/97	Filed order (Stephen R. REINHARDT, Pamela A. RYMER, Michael D. HAWKINS): This case is resubmitted for decision as of the filed date of this order. (tm) [94-10158]
7/17/97	Case resubmitted on this date to Stephen R. REINHARDT, Pamela A. RYMER, Michael D. HAWKINS. (See previous deferral of submission.) Order filed: 07/17/97. [94-10158] (tm) [94-10158]
9/9/97	Received letter from pro se re: Status of Appeal. (Mailed copy of docket rpt.) (tm) [94-10158]
11/28/97	Received Abel Martinez Salazar's additional citations, served on 11/25/97 (PANEL) [94-10158] (tm) [94-10158]
<u>1998</u>	
1/30/98	Received Appellant Abel Martinez Salazar's letter dated 01/28/98 re: status of appeal (Mailed copy of docket rpt. to appellant) [94-10158] (tm) [94-10158]

<u>DATE</u>	<u>DOCKET ENTRY</u>
5/28/98	FILED OPINION: REVERSED AND REMANDED (Terminated on the Merits after Oral Hearing; Reversed; Written, Signed, Published. Stephen R. REINHARDT; Pamela A. RYMER; Michael D. HAWKINS, author.) FILED AND ENTERED JUDGMENT. [94-10158] (tm) [94-10158]
6/4/98	Filed motion and clerk order (Deputy Clerk: TMB) Appellee's motion for an extension of time to file a petition for rehearing and suggestion for rehearing en banc is granted. The petition for rehearing is due 7/13/98. (Motion recvd 06/04/98) [94-10158] (tm) [94-10158]
7/13/98	Filed original and 40 copies Appellee USA's petition for rehearing with suggestion for rehearing en banc 12 p.pages, served on 7/13/98 (PANEL AND ALL ACTIVE JUDGES) (tm) [94-10158]

<u>DATE</u>	<u>DOCKET ENTRY</u>
7/30/98	Filed order (Stephen R. REINHARDT, Pamela A. RYMER, Michael D. HAWKINS): Defendant-Appellant shall file a response to the Petition for Rehearing with Suggestion for Rehearing En Banc, filed with this court on 7/13/98, within 21 days from the date of this order. [94-10158] (tm) [94-10158]
8/17/98	Filed Appellant's response to appellee's petition for rehearing with suggestion for rehearing en banc; served on 8/11/98 (PANEL AND ALL ACTIVE JUDGES) [94-10158] (tm) [94-10158]
10/7/98	Filed order (Stephen R. REINHARDT, Pamela A. RYMER, Michael D. HAWKINS). . . . The petition for rehearing is DENIED and the suggestion for rehearing en banc is REJECTED. (FOR COMPLETE TEXT SEE ORDER) [3486543-1] [94-10158] (rc) [94-10158]
10/14/98	Filed USA in 94-10158 motion to stay the mandate for 30 days, to and including 11/13/98, pending review for application for writ of certiorari. (faxed to author). [94-10158] served on 10/13/98 [3544492] (db) [94-10158]

<u>DATE</u>	<u>DOCKET ENTRY</u>
10/14/98	Filed order (Michael D. HAWKINS): Appellee's motion to stay the mandate for 30 days, to and including 11/13/98, pending consideration of the filing of a petition for writ of certiorari is GRANTED. (Atys. notified) [94-10158] (tm) [94-10158]
11/13/98	Filed apel's second motion to stay the mandate pending review for application for petition for writ of cert. (requesting stay until 1/5/99) (faxed to author) [94-10158] served on 11/12/98 [3564460] (db) [94-10158]
11/18/98	Filed order (Michael D. HAWKINS) The US's second motion to stay the mandate to and including 1/5/99 is GRANTED. [94-10158] (tm) [94-10158]
12/30/98	Filed USA in 94-10158 third motion to stay the mandate. (faxed to author) [94-10158] served on 12/28/98 [3591275] (db) [94-10158]

DATE	DOCKET ENTRY
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1999

1/6/99 Filed order (Michael D. HAWKINS): The United States's third motion to stay the mandate to and including 2/4/99, pending the filing of a petition for certiorari, is GRANTED. [94-10158] (tm) [94-10158]

1/7/99 Received letter from the Supreme Court dated 1/4/99 re: extension of time to file cert (extension granted to and including 2/4/99) [94-10158] (tm) [94-10158]

2/11/99 Received notice from Supreme Court: petition for certiorari filed; Supreme Court No. 98-1255, filed on 2/4/99 and placed on the docket 2/5/99. [94-10158] (rc) [94-10158]

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

No. CR-93-284 PHX

UNITED STATES OF AMERICA, PLAINTIFF

*v.*ABEL MARTINEZ SALAZAR, TOMAS VELEZ-GILES,
AND CELSO ORGANISTA-DORANTES, DEFENDANTS

INDICTMENT

VIO: 21 U.S.C. § 846 (Conspiracy to Possess
with Intent to Distribute Heroin)
 COUNT 1

 21 U.S.C. § 841(a)(1) (Possession with
Intent to Distribute Heroin)
 COUNT 2

 18 U.S.C. § 924(c)(1) (Use of a Firearm
During and in Relation to a Drug
Trafficking Crime)
 COUNT 3

THE GRAND JURY CHARGES:

COUNT 1

Beginning on or about July 22, 1993, and continuing up to and through July 27, 1993, in the District of

Arizona and elsewhere, defendants ABEL MARTINEZ, TOMAS VELEZ-GILES and CELSO ORGANISTA-DORANTES did knowingly, willfully and unlawfully conspire, combine and agree with other persons known and unknown to the grand jury, to possess with intent to distribute heroin, a Schedule I Drug Controlled Substance, in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(A)(i).

All in violation of Title 21, United States Code, Section 846.

COUNT 2

On or about July 27, 1993, in the District of Arizona, defendants ABEL MARTINEZ, TOMAS VELEZ-GILES and CELSO ORGANISTA-DORANTES did knowingly, willfully and unlawfully possess with intent to distribute heroin, a Schedule I Drug Controlled Substance.

In violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(A)(i).

COUNT 3

On or about July 27, 1993, in the District of Arizona, defendants ABEL MARTINEZ, TOMAS VELEZ-GILES and CELSO ORGANISTA-DORANTES, did knowingly use and carry two firearms, that is a Glock Model 17, 9 mm semi-automatic pistol, serial #H6058, and an Interarms, .38 Special revolver, Serial #W120169, during and in relation to a drug trafficking crime as defined in Title 18, United States Code, Section 924(c)(2) and Title 21, United States Code, Section 802 *et seq.*, that is possession with intent to distribute heroin, as alleged in Court 2 of this indictment.

In violation of Title 18, United States Code, Section 924(c)(1).

A TRUE BILL

SIGNATURE ILLEGIBLE

FOREPERSON OF THE GRAND JURY

Date: August 24, 1993

JANET NAPOLITANO

United States Attorney

District of Arizona

SIGNATURE ILLEGIBLE

VINCENT Q. KIRBY

Assistant U.S. Attorney

United States District Court
District of Arizona

UNITED STATES OF AMERICA

JUDGMENT IN A
CRIMINAL CASE

v.

ABEL SALAZAR-MARTINEZ

Case Number: CR-
93-284-01-PHX-EHC

SSN: 523-26-9869

Madison Street Jail

Bernardo Garcia, Appt'd
Attorney for Defendant

[Filed: March 9, 1994]

THERE WAS A:

[] finding [X] verdict] of guilty as to counts(s) I, II and III

[] finding [] verdict] of not guilty as to count(s) _____

[] judgment of acquittal as to count(s) _____

The defendant is acquitted and discharged as to this/these count(s)

THE DEFENDANT IS CONVICTED OF THE OFFENSE(S) OF:

Title 21, Section 846, Conspiracy to Possess with Intent to Distribute Heroin - Count I

Title 21, Section 841(a)(1), Possession with Intent to Distribute Heroin - Count II

Title 18, Section 924(c)(1), Use of a Firearm During and in Relation to a Drug Trafficking Crime - Count III

IT IS THE JUDGMENT OF THIS COURT THAT:

Defendant is committed to the custody of the Bureau of Prisons for imprisonment for a period of SIXTY-THREE (63) MONTHS on Counts I and II, to be served concurrently. A term of supervised release of FORTY-EIGHT (48) MONTHS, on Counts I and II is imposed, to be served concurrently. As to Count III, the defendant is sentenced to SIXTY (60) MONTHS imprisonment, to be served consecutively with Counts I and II. A term of THIRTY-SIX (36) MOTNHS supervised release is imposed, to be served consecutively with the term of supervised release imposed in Counts I and II. Within 72 hours of release from custody, the dft. shall report in person to the probation office in the district to which he is released. While on supervised release the defendant shall comply with the standard conditions of supervised release, as adopted by in General Order #201 and the following special conditions: 1. Defendant shall submit to search of person, property, vehicles, business, and residence, to be conducted in a reasonable time and place, by, or at the direction of, the probation officer. 2. Shall participate as instructed by the probation officer in a program approved by probation, for substance abuse treatment, which may include testing for substance abuse. Defendant shall also abstain from the use of alcohol and all other intoxicants during the period of supervised release. 3. Shall participate in a mental health program as directed by the supervising probation officer, which may include taking prescribed medication. 4. Shall not re-enter the United States without legal authorization. No fine shall be imposed, the Court finding that the defendant's lack of assets make it unlikely that he will be able to pay a fine. Any monies earned during incarceration are to be paid to his

family through the inmate Financial Responsibility Program. Defendant is advised of his right to appeal the sentence within 10 days.

In addition to any conditions of probation/supervised release _____. IT IS ORDERED.

CONDITIONS OF PROBATION/SUPERVISED RELEASE

Where probation has been ordered the defendant shall:

- (1) refrain from violation of any law (federal, state, and local) and get in touch immediately with your probation officer if arrested or questioned by a law-enforcement officer;
- (2) associate only with law-abiding persons and maintain reasonable hours;
- (3) work regularly at a lawful occupation and support your legal dependents, if any, to the best of your ability. (When out of work, notify your probation officer at once and consult him prior to job changes);
- (4) not leave the judicial district without the permission of your probation officer;
- (5) notify your probation officer immediately of any changes in your place of residence;
- (6) follow your probation officer's instructions, report as directed, and comply with any general or special conditions pursuant to District of Arizona General Order 201.

The Court may change the conditions of probation or supervised release or extend the term of supervision, if less than the authorized maximum, at any time during the period of probation or supervised release. The Court may issue a warrant and revoke the original or any subsequent sentence for a violation occurring during the period of probation or supervised release.

IT IS FURTHER ORDERED that the defendant shall immediately pay to the Clerk of the Court a total special assessment of \$150.00 pursuant to Title 18, U.S.C. Section 3013 for count(s)

I, II and III _____ as follows;
immediately. May be collected during period of imprisonment through the Inmate Financial Responsibility Program. Unpaid balance made a condition of supervision.

IT IS FURTHER ORDERED that counts _____ are DISMISSED on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall pay to the United States Attorney for this district any amount imposed as restitution. The defendant shall pay to the Clerk of the Court any amount imposed as a fine and as a cost of prosecution. Payment of such amount is due immediately but, if so ordered shall be payable in equal monthly installments with payment in full by a date certain. In all cases restitution, fines, and costs shall be payable during the period of incarceration with the payment of any remaining balance to be a condition of probation or supervised release. Until all restitutions, fines, special assessments and costs are fully paid, the defendant shall immediately notify the United States Attorney for this district of any change in name and address.

IT IS FURTHER ORDERED that the Clerk of the Court deliver a certified copy of this judgment to the United States Marshal of this district.

[] The Court orders commitment to the custody of the Bureau of Prisons and recommends:

March 7, 1994

Date of Imposition of Sentence

EARL H. CARROLL

Signature of Judicial Officer

**Earl H. Carroll
United States District Judge**

Name and Title of Judicial Officer

cc:	
U.S. Marshal	(2)
Probation/PTS	(3)
U.S. Attorney	(1)
Immigration	(1)
Atty for Dft	(1)
Defendant	()
Judge	(1)
Order Finance	(1)
B of D	(2)
Initials:	_____

3/9/94

March 8, 1994

Date

RETURN

I have executed this Judgment as follows: _____

Defendant delivered on _____ to _____ at
 _____, the institution designated by the Bureau of
 Prisons, with a certified copy of this Judgment in a Criminal case.

 United States Marshal

By _____
 Deputy Marshal

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

No. CR 93-284-PHX-EHC

THE UNITED STATES, PLAINTIFF

v.

ABEL MARTINEZ-SALAZAR,
CELSO ORGANISTA-DORANTES, DEFENDANTS

TRANSCRIPT OF JURY TRIAL

December 7, 1993

[2]

THE CLERK: Criminal 93-284, *United States of America v. Abel Martinez-Salazar and Celso Organista-Dorantes* on for jury trial.

MR. KIRBY: Good morning, Your Honor. Vincent Kirby on behalf of the United States.

MR. GARCIA: Good morning, Your Honor. Bernardo Garcia for Mr. Abel Martinez-Salazar.

MR. BARTOLOMEI: Morning, Your Honor. Gregory Bartolomei on behalf of Celso Organista-Dorantes present in court.

THE COURT: All right, thank you. Any matters that we need to discuss before we expect the jury to come up?

MR. BARTOLOMEI: Not really, Your Honor. I would request to invoke the rule regarding witnesses.

THE COURT: All right. Well, the witnesses will be excluded, and the parties should tell any witnesses that they have that they are excluded from the courtroom. They're not to be present in the courtroom at any time, including after for final arguments unless ordered by or allowed by the Court. And so you should tell them that, and they shouldn't discuss their testimony with anyone other than the lawyers involved in the case, and that's your responsibility to tell them that.

Anything else? With respect to the defendants, [3] what order for the defendants? Any particular order that we're going to have?

MR. GARCIA: Your Honor, I believe that Mr. Abel Martinez-Salazar will go first.

THE COURT: You go first —

MR. GARCIA: Yes, Your Honor.

THE COURT: — is what you're saying. All right. Is that agreeable?

MR. BARTOLOMEI: Yes, it is, Your Honor.

THE COURT: All right. And then if there's some reason to change on a particular witness, why, we can

discuss that or it can be done. But just so the jury will have an idea about it.

You also know that we don't reserve opening statements by the defense. So be prepared to make those following the Government's opening statement. Opening statements are intended to be factual in character, what you expect the evidence to be. And then final argument, you can become more eloquent about the benefits of the judicial system in the United States and things like that. So if you'd do that, that would be helpful too.

We have the questionnaire that's being filled out downstairs. And so we will pick that up when it's completed, and put it in alphabetical order. And then you'll get a copy. We'll give you all a copy of the questionnaires that [4] have been filled out by the jury. And then mid-morning recess, perhaps after that we can—you can look at them during that time, and see which ones you may want to come in for some individual questioning, and then we will do that as a part of the process.

We'd hoped to be able—I would hope to be able to pick the jury by early afternoon so we could get opening statements out of the way at least. I neglected to advise you all—and I apologize because there are just a number of things happening, but we will not have trial tomorrow. I asked the clerk to call you after court yesterday to explain to you, a lawyer, James Hawthorne White died in Nogales, and I'm really committed to go to his services tomorrow morning at 11:00 in Nogales.

So we'll have a full day then, or we'll accommodate Mr. Garcia's schedule Thursday afternoon. I would hope that we'd be able to complete the trial on Friday without pressure on anyone. If necessary we'd continue it on Monday or Tuesday morning, as necessary. So we'll work it out in that fashion. And I hope it doesn't inconvenience any of you to too great an extent. So that's what we'll be doing there.

Yes, Mr. Garcia.

MR. GARCIA: Your Honor, it was my understanding, and I believe it was also Mr. Bartolomei's understanding that we would start opening arguments on Thursday afternoon. And [5] I believe that if we started at that time, there's still a very good chance we'll be done by Friday.

THE COURT: Opening arguments on Thursday afternoon?

MR. GARCIA: That was my understanding.

THE COURT: No. If we have time we're going to do it this afternoon.

THE CLERK: No. I didn't say that. Mr. Garcia had asked you about recessing Thursday morning.

THE COURT: Was it Thursday morning that you wanted out?

MR. GARCIA: Yes.

THE COURT: I thought it was Thursday afternoon. But in any event, whatever your schedule is—

MR. GARCIA: No, Your Honor.

THE COURT: If we have time this afternoon we're going to have opening arguments—or opening statements. They're not arguments, opening statements—

MR. GARCIA: Yes—

THE COURT: —this afternoon and evidence, if we can. And then we will—how long is your time Thursday morning?

MR. GARCIA: The morning, Your Honor.

THE COURT: What are you doing?

MR. GARCIA: I have a pretrial conference with [6] attorneys coming in from various—

THE COURT: Right. Well, what time is it scheduled for?

MR. GARCIA: It is scheduled for 9:00 in the morning in Mesa, Your Honor.

THE COURT: Well, I'll call the judge, also and find out how long he plans on having it. It's hard for me to imagine a pretrial conference going three hours. Do you think it will?

MR. GARCIA: That's correct, Your Honor. The matter wasn't—yesterday I told you it was in front of Judge Swartz. It's in front of Judge Hendricks and it's in Mesa.

THE COURT: Judge who?

MR. GARCIA: Hendricks, Your Honor.

THE COURT: Cheryl Hendricks?

MR. GARCIA: Yes, Your Honor.

THE COURT: All right. Well, I'll call and see. You know, I'm certainly going to give you time to do it, but it would be most unusual to have a three hour pretrial conference.

MR. GARCIA: Your Honor, I would anticipate that it would be over by 9:30, 10:00, and that it would take me about an hour to drive back from Mesa.

THE COURT: From Mesa? Well, we'll speed you up [7] all the way through your life, Mr. Garcia.

MR. GARCIA: Thank you, Your Honor.

THE COURT: So we'll plan on maybe starting around 11:00 Thursday morning. But in any event, we want to give everybody a chance to get where they're going.

Anything else?

MR. KIRBY: Your Honor, in terms of—I'm certainly prepared to go to opening statements. My information was we weren't doing any trial testimony, and I called off my witnesses until Thursday.

THE COURT: Well, quite likely that'll be fine. If we get the opening statements in, that would be good, however.

All right. Well, our procedure this morning, we're going to get the jury panel up in a few minutes and seat them, and then randomly call them after that to be seated, and give them a piece of paper at some time, and they can stand up and give us that information.

Then we'll have the questionnaires completed and go through that process. So do you think they're about ready downstairs, Bobby?

The folks that are here in the back of the courtroom, do you speak English, the three of you? You all speak English? Because I was going to say, if you didn't, we have some of the headsets that you could listen to. Maybe [8] you already—anyone have any of those? No.

All right. And I would also ask you, if you would just while we're seating the jury, what do you think, Bobby, in the back row, put them in the back row? If you'd just be seated in the back row. And then when—so we can have the jury all seated, and then after that you can come back up. So that'll help us out there. And so why don't you, when they come up, Bobby, then keep the first two rows. Ask them to—

THE CLERK: Yes.

THE COURT: Don't you think? Maybe she could tell them downstairs; don't you think?

THE CLERK: Sure.

THE COURT: So are we ready to get them up?

THE CLERK: Yeah, I'm doing it now. I'm asking now.

THE COURT: Okay. Well, let me know when they're here, and then we'll get ready to go. Nothing else.

Remember, also with respect to objections, if you have any objections, hearsay, foundation, that's it. You want to discuss them, we do it up by the bench.

Are we set up to do things in the jury room if we need to? You got yourself set up. Okay, fine.

So when we do the individual questions generated by the questionnaires, we'll do that in the jury room. And of [9] course, the defendants can be in there while we do that as well. So keep that in mind. So we'll get organized then and get started.

(Recess from 9:10 a.m. to 9:32 a.m.)

THE COURT: Thank you very much. Be seated, please.

THE CLERK: Criminal 93-284, *United States of America v. Abel Salazar and Celso Organista-Dorantes*, on for criminal jury trial.

MR. KIRBY: Good morning, Your Honor. Vincent Kirby on behalf of the United States.

MR. GARCIA: Good morning, Your Honor. Bernardo Garcia on behalf of Mr. Abel Martinez-Salazar.

MR. BARTOLOMEI: Good morning, Your Honor. Gregory Bartolomei on behalf of Celso Organista-Dorantes.

THE COURT: All right. Members of the jury panel, we will have a certain general procedure that we're going to follow this morning, and we will—I'll tell you briefly about that after we have you stand and be sworn by the Court clerk. So if you'd do that.

(Jury Panel Sworn)

THE COURT: All right. We have, I'm told, 44 of you here for this purpose, and so it takes a little time for us to get information from you and to tell you something about the trial. And that's what we will be doing this [10] morning and certainly into the early afternoon at least.

It's necessary during this process that you all be able to hear me, and during the process also that we all be able to hear you. And so we'll remind you of that from time to time. But it's necessary as we get information from you that you speak up. We'll have a hand-held microphone to try to assist you in doing that.

Sometimes the microphone acts a little ornery and we can't use it too well, but we try. And so we'll be doing that.

And then in the process, very shortly you're going to be called to be randomly seated, mixed up as you're being seated, and we'll try to do that in an orderly fashion.

Just to tell you about our system, we're trying to do it. Usually I have a law clerk, called a bailiff, come in and help with that, but we're going to try to keep that person working on other matters in chambers, and so we will try to get you all seated appropriately without that.

Our process is to start off in the jury box and seat people there, and then across this rail, there's a seat in front of the railing here, put people there and in the next couple of rows back. And so that's the reason we ask you not to sit in those rows.

And so once we get you seated and get your names, then we'll get some other initial information, tell you a little about the trial and our trial schedule to see how that [11] impacts on any of you.

So our first order of business then is going to be randomly seating you. I'm told you that you received a little slip of paper. Keep that with you, because once we get you seated, at some time then we're going to ask you all to stand, keep that piece of paper in front of you and give us that information that's requested there. So that's what we'll be doing. And so it'll take us a little time now to seat all of you. Remember also you have to

stay together here while we're doing this. So if someone thinks they have to step outside for some reason, hold up your hand and we'll have to take a recess.

It's 9:30. You got downstairs at least by 9:00 or earlier I'm sure, and so you've been in the building for a little time. We'll take a recess at 10:30, quarter to 11:00, somewhere in there, 10:30 perhaps, so that you can step outside and so that I can also discuss with the lawyers during the recess the questionnaire that you filled out downstairs. And so we'll be doing—that's kind of generally what we'll be doing.

And so to introduce myself, my name is Earl H. Carroll. I'm a United States district judge, and it's my responsibility to preside at the trial here. And we're on the sixth floor and simply called Division 6 by our numbering system. So you can keep that in mind as well.

[12] So in any event, now, Ms. Hightower, who is seated on my left here, is going to call your names randomly. She'll call your name, spell your last name for us, and then we will direct you how to be seated here. So be patient with us and we'll get that done.

THE CLERK: Alvin Mann, M-A-N-N, just come up here and be seated.

THE COURT: When you step into the jury box, there's a little step coming up off the floor, and it's kind of dark there. So be careful as you all come up and do that.

Mr. Mann, if you'd just go in the back row all the way over. Thank you.

THE CLERK: John Kelly, K-E-L-L-Y.

THE COURT: Just be seated. Thank you.

THE CLERK: Robert Johann, J-O-H-A-N-N; Neal Sundeen, S-U-N-D-E-E-N; Cynthia Gordon, G-O-R-D-A-N; Silvio Vaninetti, V-A-N-I-N-E-T-T-I; Robert Rendek, R-E-N-D-E-K; Martin Johnson, J-O-H-N-S-O-N.

THE COURT: Mr. Johnson, just come up and be seated in the front row. We'll leave that back chair empty there. It's behind the post, really. It's impaired vision.

THE CLERK: Christopher Lanford, L-A-N-F-O-R-D; Ronald Eckard, E-C-K-A-R-D; Joel Schotz, S-C-H-O-T-Z; Reba Varela, V-A-R-E-L-A; Robert Dunst, D-U-N-S-T; Edward Sink, S-I-N-K.

[3] THE COURT: Mr. Sink, just come over here and be seated all the way down at this end. Thank you.

THE CLERK: Mary—

THE COURT: Just right here inside.

THE CLERK: Mary Smith, S-M-I-T-H; Mark Gilmore, G-I-L-M-O-R-E; Merle Baker, B-A-K-E-R; Robert Schroeder, S-C-H-R-O-E-D-E-R; Barbara Schaller, S-C-H-A-L-L-E-R; Julie Colomitz, C-O-L-O-M-I-T-Z (sic).

JUROR/KOLOMITS: Ma'am, the spelling on that is wrong. It starts with a "K."

THE CLERK: All right. Thank you. Dennis Hultz, H-U-L-T-Z; Joe Bollinger, B-O-L-L-I-N-G-E-R; Richard Conn, C-O-N-N; Susan C-H-M-I-E-L-E-W-S-K-I; Darvin Finck, F-I-N-C-K; Mary Simmonds, S-I-M-M-O-N-D-S.

THE COURT: If you'd just come up and be seated in the first seat behind the rail there.

THE CLERK: Martin Welter, W-E-L-T-E-R-; Kimberly Keil, K-E-I-L; Etoy Hanserd, H-A-N-S-E-R-D; Christine Pelander, P-E-L-A-N-D-E-R, Pelander; Donald Gilbert, G-I-L-B-E-R-T; Arnold Riley, R-I-L-E-Y; Julie Ball, B-A-L-L; James Allen, A-L-L-E-N; Francisco Olivas, O-L-I-V-A-S; Darryl Bingham, B-I-N-G-H-A-M; Doria Morlan, M-O-R-L-A-N; Shuhui Fan, F-A-N; Clifford Schlueter, S-C-H-L-U-E-T-E-R; Jeffrey Smith, S-M-I-T-H; Cynthia Wineman, W-I-N-E-M-A-N; Jeannie Collins, C-O-L-L-I-S; Georgia Lindsey, L-I-N-D-S-E-Y; [14] Bonnie Baker, B-A-K-E-R; John Velez, V-E-L-E-Z.

Is there anyone whose name I didn't call?

THE COURT: All right. Thank you very much now. We'll be going on and getting some more information.

Before we do that, let me just tell you briefly about our time schedule. And if any of you have some problem that creates some serious situation for you to be here, why, hold up your hand. We'll get your name and get that information so we can consider it.

Today is Tuesday, of course. The reason we have as many of you here as we do, we're going to pick a jury of 13 people, but we need that many of you in order to pick that number of jurors. The parties can excuse a certain number of people on the jury, and some will have conflicts or other matters. And so we need that many of you here to pick the jury.

We will get the jury picked today. We may have opening statements later in the afternoon. We may not. We won't have any testimony today.

Tomorrow we're not going to be in court. Another matter has occurred, and so we won't be in trial tomorrow. We'd probably have you back Thursday morning, 11:00 or something like that because of other matters that are scheduled with the parties involved. Every time we have a trial, and the more people that are involved in the trial, [15] the more problems we have getting everybody to be available. We all have to be available at the same time: the parties, the lawyers, the witnesses, the jury. And so it does, it creates a problem of simply getting everyone together.

So we'd have trial Thursday, an hour in the morning perhaps, Thursday afternoon, Friday. If necessary, we would conclude the trial on Monday. That's about what we're looking at timewise. It may be a little longer. It may be a little shorter. It's always difficult to know exactly how long the trial will go.

Our normal trial day is from 9:00 in the morning, we have a recess in the morning for 20, 25 minutes so everyone can step outside. We take a lunch break for an hour, an hour and 15 minutes in the middle of the

day. We have a recess in the afternoon. We ordinarily stop some time around 1:00, 4:15 in the afternoon. I have concluded, in my own experience watching people and seeing jurors, and really the intensity of a trial and sitting and concentrating and listening carefully, that's about the maximum time I think that people can really sit, concentrate and be good jurors.

Also it's helpful, I think—people have other matters scheduled, picking up children, things like that. And so we try to get you out of the building so that you can get on your way before the traffic builds up. So that's what our schedule will be.

[16] Now, recognizing that, is there anyone now on the jury panel that has any problems, medical appointments, trips overseas, things like that, that would prevent you from being with us through next Monday if necessary? So we always start in the jury box to have people hold up their hand, the back row and the front row, and then go by row. So if anyone in the jury box has any problem, please hold up your hand and tell us what it is for that schedule, and then we can make a note of it, and see what we'll do. Anyone in the jury box?

JUROR/SUNDEEN: My name is Neal Sundein, and I have a trial set on Monday and Tuesday of next week. I'm a lawyer.

THE COURT: And that's—

JUROR/SUNDEEN: In the superior court.

THE COURT: And who's the judge?

JUROR/SUNDEEN: Donahue.

THE COURT: All right, thank you. Well, we'll keep that in mind and see how we're doing and so forth.

All right. Anyone else in the jury box? Front row, anyone in the front row that has any problem for that period of time? All right. Second row, anyone in the second row have any problems? Third row, any problems? All right. Well, that's very good—very unusual, as a matter of fact.

If any of you—should occur to you, please let us know that you have something going. We sure don't want to [17] talk you into having any problems, whatever they may be. We don't want you to have any problems. But in any event, if it should occur to you during the trial, or during the selection process, let us know.

Oh, yes, sir. Your name, please.

JUROR/SINK: My name is Edward Sink.

THE COURT: Uh-huh.

JUROR/SINK: And I have been on vacation for two weeks from my work, and I just came back from a business trip for four days. And I'm having a hard time keeping up. And I don't know if this will have any bearing on whether or not I get selected. But I would like you to keep that in mind.

THE COURT: Who do you work for?

JUROR/SINK: Allied Signal Aerospace in Tempe.

THE COURT: All right, thank you. Well, we'll keep that in mind as we go along. Hopefully we'll have enough jurors that we really can accommodate any concerns that people have about their schedule. But we'll see how that goes. All right, all right. Yes, ma'am.

JUROR/MARY SMITH: I'm Mary Ellen. I've been excused once before, and I hesitate to ask for an excuse again. However, I'm an English instructor at one of the community colleges, and we're in exam week this week and next week. And while we can ask instructors to monitor our exams, we can't ask them to grade the 3- or 400 research papers, [18] essays and so forth.

THE COURT: Well, we'll let you do the honor system. Just let them go in, be by themselves. That'll help out. Well, we'll keep that in mind. Anyone else? All right, thank you.

Okay. Now, we're going to go through and have you give us the information that's called for on those little pieces of paper that we've handed each of you. And during that, I would ask you to stand up so that everyone can see you. And keep the piece of paper in front of you and speak up. And if we have any problems with the microphone, why, we'll try to adjust that. So we'll just go on across, and just hand the microphone from one to another. And so the first one we'll have is Mr. Mann.

JUROR/MANN: My name is Alvin Mann. I live in Miami, Arizona. I'm a supervisor for Magman Copper

Company at Pinto Valley Division. I have graduated high school, had some college and trade school, but I did not graduate college. I am separated presently.

My military service, I served honorably in the Navy three years, four months and 28 days, got an E-5.

My prior jury duty was in the third quarter of '93. I served on three criminal juries: sexual abuse, DUI and possession of controlled substance. The verdict on all three were guilty.

[2] THE COURT: Was that in Gila County Court?

JUROR/MANN: Yes, sir.

THE COURT: All right, thank you. Going on across then, Mr. Kelly.

JUROR/KELLY: My name is John Kelly. I'm from Phoenix, Arizona. I am a productivity industrial engineer. Basically that includes efficiency expert, increasing the productivity of employees and various work centers. I currently hold two bachelors degrees and I'm working on my masters.

Military service, United States Air Force, rank of captain, 10 years active duty.

Prior jury duty, fraudulent use—it was a criminal case, fraudulent use of credit card, and the individual was found guilty in May of 1990.

THE COURT: All right, thank you. What are we doing. Bobby, just a second. What did we do—

JUROR/JOHANN: My name is Robert Johann. I live in Mesa, Arizona. I'm retired. I have two years at ASU, no military service and no jury duty.

THE COURT: All right, thank you. We have our worse problem I think right under the speaker. So Mr. Sundeen, you have a loud clear voice. So you can do—

[20]JUROR/SUNDEEN: Thank you. My name is Neal Sundeen, and I live in northeast Phoenix. I'm an attorney. My wife is a realtor and a broker. I have 19 years of education. My wife has an MBA, 17 years of education.

I've been in the Army. I was an E-4 two years, and I have no prior jury duty.

THE COURT: Thank you. Ms. Gordon.

JUROR/GORDON: My name is Cindy Gordon. I live in northeast Phoenix. My position is a network administrator for an insurance adjusting company. My husband is a claims manager for an insurance company. My education is high school, some college. I did not graduate from college. I took law classes and computer classes. My husband has graduated from college. I have no military service and no prior jury duty.

THE COURT: Thank you.

JUROR/VANINETTI: My name is Silvio Vaninetti. I live in northwest Phoenix, actually in Peoria. I work for a general contracting firm. I'm a foreman and estimator. My duties require scheduling crews and run-

ning the work. I graduated from college at Arizona State, four-year degree. My wife as well. I have no military service, and I've had no prior jury duty.

THE COURT: Thank you, sir. All right. Going on then, Mr. Rendek.

JUROR/RENDEK: My name is Robert Rendek. I am retired from Armor & Company. My wife is a housewife. I [21] have four years of college education. My wife does not. My only military service was approximately eight years in the Illinois National Guard, where I obtained the rank of second lieutenant.

On jury service, I've been called in the midwest and was selected as a juror. And before it went to trial, a mistrial was called. And I was called in superior court here, but never again selected as a juror.

THE COURT: All right, thank you, sir. All right. Mr. Johnson.

JUROR/JOHNSON: My name is Martin Johnson, and I am an inspector of TRW vehicle safety systems. My wife is a housewife and works part-time as a paralegal. I graduated from high school, no military service and no prior jury duty.

THE COURT: Where do you live, what community?

JUROR/JOHNSON: Oh, excuse me, east Mesa.

THE COURT: Does your wife work for a particular firm as a paralegal?

JUROR/JOHNSON: Yes, sir.

THE COURT: And who is that?

JUROR/JOHNSON: Trying to remember now.

THE COURT: Do you know whether the firm —

JUROR/JOHNSON: It skipped my mind. I'm sorry.

THE COURT: Do you know whether the firm is involved in criminal or civil law or just what?

[22] JUROR/JOHNSON: It's criminal.

THE COURT: All right, thank you. All right. Then going on, Mr. Lanford.

JUROR/LANFORD: My name is Chris Lanford. I live in Phoenix, Arizona. My job is at Bill Luke Chrysler Plymouth. I'm an auto painter. I'm currently separated. I went to high school to the tenth grade. I went to vocational college and graduated through it. I've never been in the military service, and I've had no prior jury duty.

THE COURT: All right, thank you. Mr. Eckard.

JUROR/ECKARD: I'm Ronald Eckard and I live in east Mesa. I work at Leisure World doing landscaping. My wife works at Burger King. Education,

eleventh grade but I do have a GED. My wife works at Burger—my wife works—and my wife, eighth grade. Military service, I was in the military for three years, branch of Army, rank E-4. And prior jury duty, never did.

THE COURT: Thank you, sir. Mr. Schotz.

JUROR/SCHOTZ: My name is Joel Schotz. I live in Phoenix. I'm the branch manager for Myers Tire Supply here in Phoenix. My wife is a revenue clerk for America West Airlines. We both have a couple of years of college, no degree. No military service, and no prior jury duty.

THE COURT: All right, thank you. Ms. Varela.

JUROR/VARELA: My name is Reba Varela. I live in [23] Phoenix, Arizona. I'm a real estate manager with a management company. My husband is self-employed as a landscaper. I have a high school degree—high school diploma, a couple of years of community college off and on. My husband the same. No military service.

I've served on two juries prior to—one was a slip-and-fall case. That was not guilty. One was a fraud case. That was guilty.

THE COURT: All right, thank you.

JUROR/DUNST: My name is Robert Dunst. I live in Phoenix. I am president of Touchstone Community, which is a children's behavioral health agency. My wife is in property management. I have a master's degree in

social work. My wife is an RN—no military experience and no jury duty.

THE COURT: All right, thank you.

JUROR/SINK: My name is Edward Sink. I live in Chandler, Arizona. I am a program administrator for Allied Signal Aerospace, and my wife is a claims examiner for Blue Cross/Blue Shield. We both have high school graduation and some community college. No military service and I have no prior jury duty.

THE COURT: Ms. Smith.

JUROR/MARY SMITH: I'm Mary Ellen Smith. I live in Tempe. I'm a English instructor for Maricopa County Community Colleges. I have master's degree in English. I [24] have no military service, and no prior jury duty.

THE COURT: What community college do you teach at?

JUROR/MARY SMITH: South Mountain.

THE COURT: Pardon?

JUROR/MARY SMITH: South Mountain Community College.

THE COURT: Thank you. I go there every July the 4th. They have a naturalization ceremony on the 4th of July every year at South Mountain. It's a very nice program.

Mr. Gilmore, I like your jacket, incidentally.

JUROR/GILMORE: Thank you. I'm Mark Gilmore. I live in central Phoenix. I'm a supervisor at Harkin's Theaters. I have graduated high school. I have a year-and-a-half of community college. No military, no jury duty.

THE COURT: All right, thank you. Mr. Baker.

JUROR/MERLE BAKER: My name is Merle Baker. I live in east Mesa. I'm a retired truck driver and teamster business agent. My wife is retired. I have three years at the University of Wisconsin. I was in the infantry for a year-and-a-half, retired as—or honorably discharged as a corporal.

I was on prior jury duty in county court in Wisconsin, two different cases. One was an assault and battery case. It was a not guilty case. Another was a child [25] molestation case. That was not guilty.

THE COURT: All right, thank you. Mr. Schroeder.

JUROR/SCHROEDER: I'm Robert Schroeder. I live in Winchell Park. I work for Arizona Public Service as a rate engineer. My wife is a registered nurse with Phoenix Children's Hospital. Education: I have a masters in chemical engineering. My wife has an RN in nursing. No military service.

Was on a civil case in Texas involving a house in property problems, so—

THE COURT: All right, thank you. Ms. Schaller.

JUROR/SCHALLER: My name is Barbara Schaller. I live in northwest Phoenix. I'm a purchasing assistant at DeVry Institute. My husband is self-employed and has his own insurance agency. I have a bachelor's degree in business operations. My husband has some community college. I have no military. My husband was in the Marine Corps. I don't remember how long. He was, I believe, an E-5 sergeant. And I've had no prior jury duty.

THE COURT: Thank you.

JUROR/KOLOMITZ: My name is Julie Kolomitz. I live in Glendale, Arizona. I'm a grocery clerk at Safeway in Sun City West. I graduated from high school, no military service. And I served on a civil case, a contesting of a will in Navajo County.

[26] THE COURT: All right, thank you. Just a second. Pardon me. Go ahead, Mr. Hultz.

JUROR/HULTZ: My name is Dennis Hultz. I live in northwest Phoenix. My job title, I'm a driver for Emery Worldwide and Overnight Delivery Company. I've got 14 years education. Military service was U.S. Navy for six years. Never been selected for a jury.

THE COURT: I'm talking to the clerk here about our microphone. I was going to have somebody come up from downstairs to listen and find out why we're getting all the ball scores. And all of a sudden, as soon as I did that, it stopped. So it's a pretty smart machine.

Mr. Bollinger.

JUROR/BOLLINGER: My name is Joe Bollinger. I live in Phoenix. I own and operate B&B Pest Control. My wife is a housewife. We both have a high school education and one year of college. I have no military experience and no jury duty.

THE COURT: Thank you. Mr. Conn.

JUROR/CONN: My name is Richard Conn. I live in south Scottsdale. I work for Paramount Pools in the research and development department, and also part owner of a small machine shop. High school education with about half a year of college. No military service and no jury duty.

THE COURT: All right, thank you. Ms. Chmielewski.

[27] JUROR/CHMIELEWSKI: My name is Sue Chmielewski. I work for the State of Arizona, fleet management division. I manage the auto parts warehouse. I've had 14 years of education, no military service.

And I served on two juries. One was an auto accident. The other one was burglary, and they were both guilty.

THE COURT: All right. And you live in Phoenix?

JUROR/CHMIELEWSKI: Phoenix.

THE COURT: All right, thank you. All right. Mr. Finck.

JUROR/FINCK: My name is Darvin Finck. I live in Deer Valley. I am a facility's manager for a pharmaceutical manufacturing and distribution company here in Phoenix. My wife is self-employed. She has a cleaning service. We both have a few years of college, year-and-a-half to two years. No military service and no prior jury duty.

THE COURT: Thank you.

JUROR/SIMMONDS: My name is Mary Simmonds. I live near the town of Maricopa in Pinal County. I am a mother and a homemaker. My husband is a pressman in Phoenix here. I have had—I completed high school and have some community college courses. My husband had two years of high school, I believe. Neither one of us has had military service, and I have not had any prior jury duty.

[28] THE COURT: All right, thank you.

JUROR/WELTER: My name is Martin Welter. I live in Ahwatukee. I'm a full-time mental health therapist at Samaritan Behavioral Health. I also teach exercise and fitness at two community colleges. I have a master's degree. I have not served. I'm single. I have not served in the military and no prior jury.

THE COURT: Thank you.

JUROR/KEIL-ANGELO: My name is Kimberly Keil-Angele. I live in Phoenix. I am a data center

supervisor. My husband is a federal probation officer. We're currently separated. I have a few years of college, no specific degree. My husband's working on his masters. No military service, and no prior jury duty.

THE COURT: Your husband is Dean Angelo?

JUROR/KEIL-ANGELO: Yes, he is.

THE COURT: All right, thank you. All right, going on.

JUROR/HANSERD: I'm Etoy Hanserd and I'm scared.

THE COURT: You're scared? Come on. You won the lottery.

JUROR/HANSERD: I live in Mesa. And my job is lab assistant at—

THE COURT: Pardon? You have to hold the microphone up.

[29] JUROR/HANSERD: I work as a lab assistant. I have a high school education and phlebotomy from Phoenix College. I have no military, and I've never served on a jury.

THE COURT: Thank you very much. Ms. Pelander.

JUROR/PELANDER: My name is Chris Pelander. I live in Chandler, Arizona. I am a homemaker. My husband is a programmer analyst for Arizona Public

Service. I've got some community college classes, high school diploma. Husband has three years of college. Neither one has military service. And I've been called for jury duty but not selected.

THE COURT: Mr. Gilbert.

JUROR/GILBERT: My name is Don Gilbert. I live in Phoenix. I'm a manager in Information Systems Division, a company here in Scottsdale. I manage a group of programmers. My wife's a realtor. We both have master's degrees. We don't have any military service.

I've been called on jury duty a couple of times. I was selected on a DWI case, but ended up being the alternate. So I don't know how it came out.

THE COURT: All right, thank you. Going on then.

JUROR/RILEY: My name is Arnold K. Riley. My wife and I are both retired. We own a construction company. We both have a high school education. No military service, no prior jury duty.

THE COURT: What community do you live in?

[30] JUROR/RILEY: What community?

THE COURT: Uh-huh.

JUROR/RILEY: Back in Indiana?

THE COURT: Here in Phoenix, where around here?

JUROR/RILEY: Oh, you mean Scottsdale. Didn't I say that?

THE COURT: I didn't really mean that, but that's fine. Thank you, Ms. Ball.

JUROR/BALL: My name is Julie Ball. I live in north Phoenix, and I work for a fragrance company in the warehouse. I have about two years in a community college, three years at a trade school. And no military service or prior jury duty.

THE COURT: Thank you. Mr. Allen.

JUROR/ALLEN: My name is Jim Allen, and I'm an alcoholic—no. I'm sorry, wrong place. My name is Jim Allen. I live in north Scottsdale. I'm a custom home builder. And my wife owns a lady's clothing store in Scottsdale. I've got two years of college, plus high school. I served in the Navy for two years, and I've never served on a jury.

THE COURT: Thank you, sir. Mr. Olivas.

JUROR/OLIVAS: My name is Francisco Olivas, truckload supervisor. I live in south Phoenix. GED; my wife eighth grade graduation. I've never served in the military, [31] never been on a jury.

THE COURT: All right, thank you. Mr. Bingham.

JUROR/BINGHAM: My name is Darryl Bingham. I live in northeast Phoenix. I'm QC director for Ms. Karen's. My wife is a retired teacher. I have a bachelor's degree in management, my wife as well. We have no prior military service, and no prior jury duty.

JUROR/MORLAN: My name is Doris Morlan. I live in Phoenix, Arizona. I'm a personnel assistant for the U.S. Bureau of Land Management. My spouse is a welder. I have 14 years of education. My husband is a high school graduate. I've served four years in the Air Force, rank of E-4. My spouse doesn't have any military service.

I served on a jury in superior court. It was an auto theft case, and the verdict was guilty.

THE COURT: Thank you.

JUROR/FAN: My name is Shuhui Cheng Fan. I live in northeast Phoenix. I'm a LAN systems specialist. My duty is just for computer work station. However, I'm on call all the time. My husband is a computer engineer, as well. He's self-employed right now. I have Master's degree in computer science and economics. My husband has Ph.D. in electronic engineering. I have no military services. I believe my husband had two years military services in Taiwan. I've been called for jury duty and select once, but the trial was [32] canceled.

THE COURT: Thank you. Mr. Schlueter.

JUROR/SCHLUETER: My name is Cliff Schlueter. I live in northeast Phoenix. I'm a civil engineer with

the Bureau of Reclamation. My wife is a contract manager for Honeywell. I've got a bachelor of science in civil engineering and about 12 credits post-graduate. My wife has a bachelor of arts, masters and everything but dissertation in French and a masters in international management.

I was in the United States Air Force for eight-and-a-half years, separated with a rank of staff sergeant or E-5. My wife has no military service.

I was impaneled on a grand jury in Henneman County, Minnesota about five—seven years ago. And I was called once on the jury pool here for superior court, but that's all.

THE COURT: All right, thank you. Mr. Smith.

JUROR/JEFF SMITH: My name is Jeff Smith. I live in Chandler. Self-employed roofing contractor. Wife works at Intel. Education, about twelfth grade. No military. Prior jury duty was Chandler, alternate. So I don't know what happened.

THE COURT: All right, thank you. Ms. Wineman.

JUROR/WINEMAN: My name is Cindy Wineman. I live in Fountain Hills. I work for the Fountain Hills School [33] District in special education and also the Touchstone After School Program. My husband works for Tech Poulson in Scottsdale. We're both high school graduates with some college. No military service. I served on a jury in the late seventies involving a county

snow plow hitting a car. We found the county not at fault.

THE COURT: Thank you. Ms. Collins.

JUROR/COLLINS: My name is Jeannie Collins. I live in Glendale, Arizona. I work at Maryvale Samaritan Hospital as a materials management coordinator for the computers. I oversee the patient charges and the system purchasing and distribution of hospital supplies. My husband is laid off right now. I've never been in the military service, but he was in the Navy. I've never been on jury duty.

THE COURT: Thank you. Ms. Lindsey.

JUROR/LINDSEY: I'm Georgia Lindsey. I live in Ahwatukee. I'm an RN. I have a master's degree in health administration. My husband works for TWA, regional sales manager, bachelor's degree. No military service for either of us. One prior jury duty. I was an alternate. It was a DWI, and I don't know what happened.

THE COURT: All right, thank you. Ms. Baker.

JUROR/BONNIE BAKER: My name is Bonnie Baker. I live in Tempe, Arizona. I work in a medical office, front office. My husband is a broadcast engineer. I have one year [34] community college. My husband has two years community college. I was not in the military. My husband was in the Navy, E-5 for four years. And I have no prior jury duty.

THE COURT: Thank you. Mr. Velez.

JUROR/VELEZ: My name is John Velez. I live in Chandler. I am retired from Allied Signal. My wife works for the Chandler School District. She's a food purchaser for the whole district. I have three years of trade school and some college. I was in the Air Force for four years with the rank of airman second class in those days. My wife does not have any military service.

Two years ago I served as a juror on an automobile accident in an insurance case, and the guy was found not guilty.

THE COURT: All right, thank you.

All right. Well, we've survived the microphone, and that's—that part of our process. Let me just say a few other things about our proceeding today and just generally about being a juror and a juror here in federal court.

Why we get you all here, as many of you as we do, and why we ask you questions and tell you something about the trial is really to select people who can serve on the jury who can be fair and impartial, who do not have something about their background, or their experiences, or their [35] family, their work activities that would give them some opinion one way or the other about the case that we're going to be hearing and that the jury will decide.

And I do not ask or expect people to tell us about their bumper stickers, or what they may have on their bumper stickers, or what magazines they read, or what television programs they watch, things like that. We

try to get some information about you, and we try to give you some information.

The most important thing about our process is to understand how important it is to get people who can be fair and impartial. If you don't have that, you cannot have an effective, fair trial, whether it's a civil case or a criminal case. And in the final analysis, each of you know about yourself more than I will ever learn or that parties will ever learn during the time that we spend together in this process.

So if there's something about the case or about the parties, or about anything at all involving the case that you think wouldn't—you wouldn't just be comfortable with, you wouldn't—you'd like to be a juror in some other case, tell us, because that's what's important about it. For our purposes today there's nothing wrong about having an opinion about anything, or having some prejudice against anyone for race, religion, language, anything like that. That's not of our [36] interest today. The interest that we have is to know that. And so keep that in mind.

The other thing about our system, I've decided in the last year or so to try to use a questionnaire more to get some information about the jurors. The questions that are asked on the questionnaire are I think of a personal nature, things that you shouldn't ordinarily have to share with strangers about yourself, or your family or those sort of things. And the questionnaires work out pretty well. They really do. We used to have to have the people come up by the bench, and we'd try to talk to them here in the courtroom, and it just wasn't a good system.

We're not here to embarrass any of you or to get information that isn't necessary for our purposes. If any of the questions that we ask you, you wouldn't want to answer here in the presence of all of these other folks, just hold up your hand. We can do it up by the bench or later on if we talk to people individually in the jury room. So keep that in mind.

One other thing about the questionnaires that we have you fill out. Once the jury is selected in the case, we collect all the questionnaires and we shred them so that they don't stay in the court file, and they don't have a life of their own, and some other people don't have an opportunity to look at them sometime if they'd have an interest otherwise. [37] So we pick them up and shred them. We finally got a shredder. I think there's one on every floor now, and so we're able to do that. So that's how we do that as well.

Coming to court is a different process than most of you have in your life. And someone say, "Gee, I'm scared," and that's kind of a natural reaction. It's a different environment. I confess. I've been a lawyer for many years and a judge for 13 or so. And every time I come in a courtroom, and particularly to start a trial, I'm nervous. It's a different experience. It's not like it is on television, how it operates and what happens in a courtroom. So there's nothing wrong with being—or scared about it. Just listen carefully now, as if you serve as a juror. That's the important thing the jurors do. And we'll talk more about how important jurors are as we go through the process.

It's 10:20. The other thing we do, we take a recess once in a while, as I said, and everyone we ask to come back and be seated where you are. And so we're going to take the recess. You don't know anything about our trial, but I would ask you as well not to share your experiences about serving on other juries or anything like that during this process. And we'll tell you more about not doing that as well as you stay with us.

But in any event, we'll take a recess and we'll [38] take it until a quarter of 11:00. Look at the clock on the wall and see how that fits in with your schedule. And then we'll come back. And during the process we'll distribute the questionnaires. And at some time we're going to I'm sure have a number of you come in individually. We'll go in and set up in the jury room so that we can have you come in individually and give us some additional information about that.

But there are other things that I'll ask all of you and that we will want to get some more information about. And we need to tell you about our trial. So we'll do that when we get back together. So remember now, quarter of 11:00, and come back and we'll go ahead at that time. Sixth floor, remember.

(Recess from 10:27 a.m. to 10:55 a.m.)

THE COURT: Be seated. All right. Let me tell you just a little bit about our trial now and about—something about a criminal proceeding in federal court. A criminal case in federal court starts by what is called an indictment. And the purpose of an indictment is to commence the criminal case, and to tell a defendant or

defendants what the charges are that are brought against them.

The fact that an indictment has been issued in this case is not any evidence that a crime has been committed, and you're not to draw any inferences from the fact that these [39] defendants have been indicted. There are two defendants in this case on trial before you, and each of them have pleaded not guilty to the charges that have been brought against them.

Accordingly, the Government in this case, as it has in every other case, has the burden of proving the charge against each defendant as to each charge beyond a reasonable doubt. This burden never shifts from the Government and it remains on the Government throughout the entire trial. A defendant does not have to prove that they are innocent. A defendant has no burden of proof to sustain, and is under no obligations to produce any witnesses or any evidence.

Here each of the defendants is presumed to be innocent of the charges against them in the indictment, and this presumption of innocence exists now at the start of the trial, and continues throughout the trial, and is overcome only if and when all 12 members of the jury would unanimously conclude and find that the Government had sustained its burden of proving a charge against a defendant beyond a reasonable doubt.

Another thing about a criminal trial to keep in mind, is that a defendant in a criminal case is under no obligation, has no responsibility, no duty, obligation or however you characterize it, to testify in a trial. I never know whether a defendant will or will not testify.

That is [40] simply a non-issue. Juries are told not to consider whether a defendant does not testify. And so again that's how the system functions, and how it's functioned for more than 200 years.

Now, that's really a very broad overview of a criminal trial in federal court and how it starts. Any of you have any disagreement for whatever reason with any of those propositions? Okay.

Let me say one other thing about a trial, the responsibilities of the jury and my responsibilities as a judge. My function is to preside at the trial, keep things moving along, rule on questions of law that come up during the trial. And at the end of the trial, provide the jury instructions about what the law is that they're to follow, what the elements of the charges are and what the Government's burden is in proving those charges, and how to—or some things at least—to consider in evaluating the testimony of witnesses or evidence. That's my responsibility. I cannot decide whether a defendant is guilty or not guilty. I can't do that.

The jury's function is to listen to the evidence, observe the witnesses as they testify, decide what happened, consider the instructions that are given by the Court, and arrive at a verdict, guilty or not guilty. That's the jury's function.

[41] I think it would be obvious that all of the jurors have to hear the same evidence, have to look at the same witnesses as they testify, see the same exhibits that they all look at in order to determine what happened. It's perfectly obvious to me that you couldn't very well have a trial if some jurors only listen to part

of the evidence and other jurors didn't. Similarly, it's—and jurors take an oath to do it, to follow the law that's given them by the judge and all apply that same law.

And it seems obvious to me as well that you couldn't very well have an effective system of justice if each juror or a group of jurors could decide independently what the law was and act accordingly. You couldn't—I guess I wouldn't be comfortable in that kind of a system, and I don't think anyone else would be. So that's another thing that jurors do. They agree to follow the law that's given them by the Court.

Some people may have different opinions about that. If they do, they can go to Congress or call a newspaper and talk to whoever they want to. But when they come to court, they follow the law that's given to them by the judge, if they follow their oath. Some people may have different opinions about the law or about that, but if you do, this is the time to tell us about it, because we need to know that. Because when the jury goes in to deliberate, they all hear [42] the same law and they all hear the same facts. That's how our system operates. So any of you, for whatever reason, have any disagreement with those propositions?

Do any of you, or any members of your family or friends, belong to any organization or group that interest themselves in court watching; what courts are doing; how they're operating; whether they're doing what people think they should be doing?

Any of you, or any members of your family or close friends belong to any group or organization that ac-

tively protests the right of the United States Government to collect income taxes, for whatever reason?

In this case, I'm sure you've observed that we have people here acting as interpreters for the defendants. The defendants are Spanish-speaking people, I believe the record will show or you'll be told. And so we have interpreters here for that purpose. It happens whenever there's a need for that. We have here Spanish being interpreted. But over the course of a year, we may have many other languages necessary to use an interpreter for. Many of our cases involve Native Americans. So we have people come and interpret in Navajo or Hopi or languages there, as well as other languages, German or whatever may be needed.

Okay. Anything about the fact that we're having—the defendants you will find have Spanish names, surnames and speak [43] Spanish, and we have to have an interpreter—anything about that circumstance that would affect any of you in arriving at a verdict in deciding what happened or what didn't happen?

Again, you see, that's just a circumstance that they bring with them. But other than that, it really isn't an issue as to what happened or what didn't happen. They aren't on trial here for speaking Spanish. So again—but if someone has the opinion that you should—if you get—come to court you ought to be able to speak English, we ought to know that, because again, you see, that's something that would be collateral to any of the issues that we have here.

The charges in this case are included in an indictment, and there are three counts in the indictment, and

each of the defendants are charged in each count. There are two defendants. Conspiracy—Count 1 is conspiracy to possess with intent to distribute heroin, a controlled substance. Count 2 is possession with intent to distribute heroin. And Count 3 is a firearm being there during and in relation to a drug-trafficking crime. Each one of those charge a federal crime under a federal statute.

The events are alleged to have occurred some time between July 22nd, 1993 through July 27th, 1993 here in the District of Arizona. And that's just another way for our purposes of saying the State of Arizona. And so those are [44] the charges against them.

Now, you perhaps had a sense in filling out the questionnaire that a drug charge may be involved in the case because of the questions we asked.

Now, with respect to the information that I've given you about the trial, and without being aware at this time of everything that was said in your—in answer to the questionnaires which we will look at, anything about the case itself now, based on the information that I've given to you, that would cause any of you to believe that for whatever reason you simply would not want to serve as a juror here, or don't think that you could serve fairly and impartially as a juror in this case, given the nature of the charges or the parties, anything like that? Any of you have that opinion? All right.

Perhaps this would be a good time to meet the parties. Mr. Kirby, would you introduce yourself and anyone with you?

MR. KIRBY: Thank you, Your Honor. Ladies and gentlemen, my name is Vincent Kirby. I'm an assistant United States attorney with the Department of Justice, and seated with me is Agent—Special Agent Ray Bentley of the Drug Enforcement Administration.

THE COURT: All right. Any of you know Mr. Kirby or the gentleman with him, or anyone in any of those agencies [45] that were mentioned? All right. Again, if you should know that, or know anyone like that, why please tell us.

You may recall just generally from the newspaper that we have a new recently appointed U.S. attorney in the state of Arizona, Janet Napaletano. And she was recently confirmed by the United States Senate, and so she's our new U.S. attorney. And if you know anything about Ms. Napaletano, or have any ideas or opinions about her being the U.S. attorney?

All right. Mr. Garcia, if you would introduce yourself and your client, please.

MR. GARCIA: Good morning, ladies and gentlemen. My name is Bernardo Garcia. I represent one of the co-defendants, Mr.—

THE COURT: Keep your voice up, please.

MR. GARCIA: —Mr. Abel Martinez-Salazar.

THE COURT: All right. Any of you know Mr. Garcia or his client in any way? All right. Thank you very much.

Mr. Bartolomei, if you'd introduce yourself and your client, please.

MR. BARTOLOMEI: Yes, Your Honor. Thank you. Morning, ladies and gentlemen. My name's Gregory Bartolomei. I'm partner in the firm of Bartolomei & Victor, and I represent Celso Organista-Dorantes to my right.

THE COURT: All right. Any of you know [46] Mr. Bartolomei or Mr. Organista-Dorantes? All right, thank you.

Any of you believe you've heard anything at all about this case or anything that might be involved in it, any of the events?

How many on the jury speak Spanish? I see one, two. All right. Well, we usually have more than that. But let me just say again that people who speak Spanish, we have—as it may become necessary during the trial, we have an interpreter, certified interpreters who interpret for us here in court. And so to the people that speak Spanish or understand some Spanish that would serve on the jury, they have to agree or accept the interpretation, translation that's being done by the interpreter, so that everyone again would be hearing the same thing in the same fashion.

The parties, to the extent they object to any testimony that's being given or the translation of course, then we discuss that and try and resolve it. Anyone who speaks Spanish have any difficulty following that admonition?

Do any of you on the jury—and let me say that the juries do not decide punishment for a crime. A judge does that after the trial, if there's a verdict of guilty—a judge does that. But do any of you on the jury—would have any reluctance or reservations about arriving at a decision that perhaps could impact on someone's liberty [47] interests, that they might have to serve some time in prison as a result of your verdict? Anyone, for whatever reason, religious, philosophical or otherwise simply would not want to have that responsibility, and feel you couldn't do it fairly?

Does anyone on the jury know anyone else on the jury just by where you work or anything like that? Yes, sir, your name, please.

JUROR/DUNST: Robert Dunst. There's a lady, she and I work together, not at the same location. Actually she works for me.

THE COURT: Okay. And her name here?

JUROR/DUNST: She just started.

JUROR/WINEMAN: Cindy Wineman.

THE COURT: All right, thank you.

JUROR/WINEMAN: We just met this morning.

THE COURT: All right. Anything about those associations do you think that would affect you one way or the other, either one of you, to bond together in some way? Okay.

One other thing that you—a couple of other things that you have in common that brings you here, we draw our jury panels from registered voters. The county uses driver's license and perhaps something else. I don't know. But where we get our jurors is from registered voters. So [48] you all should be or have been at the current date registered voters. You're all citizens of the United States, and you come from counties which would include Pinal County, Gila County. We recently acquired Gila County from Tucson because of the number of people that live in northern Gila County, and that it's easier, shorter distance to come to Phoenix from the Payson area than to go to Tucson. Maricopa County obviously, Yuma County and La Paz County. So that's where we get our jurors from.

Any of you been here before in the last few weeks to come to court for a possible trial? Well, it's nice to talk to people that haven't come several times in the same month, because you get the experience of hearing it all one time at least up till now.

Our jury system is that people are on our jury panel for a month or one trial. If you sit on a case, then you're excused and you don't come back. Otherwise, you could come back more than once during a month. And of course Christmas, it's hard to say what's going to happen during the Christmas holidays, but I picked a jury last week, and I'll pick a jury this week, and I'll pick a jury next week. So that's how life goes when you're here in the building. Sometimes we don't do it that often, but that's kind of what happens.

As we went through this process this morning and [49] you gave us the information on the pieces of paper

that you had, you told us about yourself and about your family, or at least your spouse, what you did, things you've done.

Let me go back in a sense to that, and some of you told us about—or told us where you work. There were people who worked for—or their spouse for the Bureau of Land Management or for a federal or state agencies, things like that. But to the extent—if you've already given us the information, it's not necessary to do it again.

But if it hasn't been told to us, starting again in the jury box, what we want to inquire of you is whether you or any members of your family now or in the past have worked for some federal agency, a state agency or local government. And if so, when and in what capacity? And in that process, without limiting it to law enforcement agencies, to keep law enforcement related agencies particularly in mind.

And this would include organizations at the federal level, such as the Federal Bureau of Investigation, the Drug Enforcement Agency, Border Patrol, Customs, Postal Service inspectors, Internal Revenue Service, federal correctional officers, U.S. marshals, any of those kind of organizations or activities. And at the state level, particularly the Highway Patrol, the Department of Public Safety, if there are any auxiliaries, belonging to auxiliaries like that. Also people who would work in a state correctional facility—a [50] prison, any sort correctional facility like that at the state level. And then also at the city—city police departments, county, county deputy sheriffs, in that organization, or the county correctional facilities, the jail.

So what we're asking you about particularly is those kind of activities, as well as anyone, wherever they might work, in a federal agency or state or local government. So again starting in the back row, if you've already told us, you don't have to hold up your hand and tell us anymore, but if there's any additional information that you would give to us about yourself or your family members, brothers, sisters, children, like that, why just hold up your hand, and tell us who it might be and what they do. So starting in the back row, anyone there with additional information? Mr. Kelly.

JUROR/KELLY: My younger brother is a former member of the Scottsdale Police Department and is currently the chief of security for America West Airlines corporate security.

THE COURT: All right. When was he—how long was he with the Scottsdale PD?

JUROR/KELLY: He was with Scottsdale Police Department less than six months there five years ago.

THE COURT: All right, thank you. And going on across in the back row, anyone else?

[51] JUROR/JOHANN: I have a son-in-law that's with the DPS. He's a white-collar crime detective.

THE COURT: And your name, please?

JUROR/JOHANN: His name?

THE COURT: Your name.

JUROR/JOHANN: Robert Johann.

THE COURT: Remember, you all have to give us your name every time. That's the reason, so that the—we have today what's called an electronic court reporter. Ordinarily we have a court reporter who takes everything down stenographically. But now we have an electronic court reporter who's sitting in front of me, and so we—in order to have complete record we need your names as we go.

All right. So he's a DPS officer.

JUROR/JOHANN: Yes.

THE COURT: How long has he done that?

JUROR/JOHANN: Five years.

THE COURT: And he doesn't—not in uniform now at least.

JUROR/JOHANN: No, he's a detective.

THE COURT: Okay, thank you. All right. Going on, anyone else in the back row? Just hold up your hand. Front row, anyone in the front row, any additional information about those things? All right. The row in front of me, anyone in the row in front of me? Remember, again now working [52] for a federal, state or local government in some capacity that you haven't told us about.

JUROR/HULTZ: Yeah. My name is Dennis Hultz. Probably about seven years ago I worked in the county jail in Phoenix in a work-release program driving a bus to and from the Maricopa County Skills Center. And I was released from there just because I didn't get along with the supervisor. And—

THE COURT: Were you a correctional officer?

JUROR/HULTZ: No, I was just a civilian employee just driving the bus and—

THE COURT: Okay, uh-huh.

JUROR/HULTZ: —taking the inmates to and from the skill center.

THE COURT: Okay.

JUROR/HULTZ: My brother was in law enforcement and drug enforcement in Idaho back when I was really young growing up. I was probably about 14, 15. And that was about 20 some years ago, 30 years ago.

THE COURT: All right. Anything about that experience or his experiences you think that would affect your ability to listen and decide here?

JUROR/HULTZ: No.

THE COURT: All right, thank you. Anyone else in the front row?

[53] JUROR/BOLLINGER: My name is Joe Bollinger. I have a brother or had a brother that was a

policeman for Clovis, New Mexico for about 20 years. And I had a cousin that worked for the Highway Patrol in New Mexico for 20 years.

THE COURT: All right, thank you. Anyone else in the front row? Anyone in the second row.

JUROR/SIMMONDS: Mary Simmonds. I have a sister-in-law who's a Mesa police officer, and I don't know exactly what she does. I think she drives a patrol car.

THE COURT: All right. I take it from what you say that you don't follow along that closely her activities.

JUROR/SIMMONDS: We meet once a year during the holidays.

THE COURT: All right, thank you. Anyone else in that row?

JUROR/ALLEN: My name is Jim Allen, and my brother-in-law is with the Security & Exchange Commission. And he's an attorney, and he does investigating and depositions.

THE COURT: All right. Thank you very much. Anyone else in that row? Anyone in the back row?

JUROR/WINEMAN: My name is Cindy Wineman. I have a sister in Michigan. She's a 911 dispatch for the Michigan State Police.

THE COURT: All right, thank you.

[54] JUROR/JEFFREY SMITH: I've got a cousin that's a police officer in Tempe, Arizona.

THE COURT: And you're Jeffrey Smith?

JUROR/JEFFREY SMITH: Yes, Jeffrey Smith.

THE COURT: Right. And tell me again.

JUROR/JEFFREY SMITH: He's a police officer in Tempe.

THE COURT: Uniformed officer?

JUROR/JEFFREY SMITH: Yes, sir.

THE COURT: And he's what, a brother-in-law?

JUROR/JEFFREY SMITH: No, he's a cousin.

THE COURT: Cousin. All right, thank you. Any-one else? Okay.

We know that Mr. Sundeen is a lawyer, and he's appeared before me. So I know that as well. Anyone else on the—and someone mentioned having—that their wife was a paralegal with a law firm. In the mean-time, have you remembered what firm that might be?

JUROR/JOHNSON: Weyl, Guyer, MacBan and Olson.

THE COURT: Pardon?

JUROR/JOHNSON: Weyl, Guyer, MacBan and Olson.

THE COURT: All right. Anyone else besides those folks that have had—apart from training that you would have had or a program course that you would have had in high school or college about business law or something like that [55] any others of you that have studied law or gone to law school, anything like that? Yes, ma'am.

JUROR/GORDON: My name is Cindy Gordon. Are you just asking if we studied law. Yes, I did about four years ago when I was trying to become a paralegal.

THE COURT: So you took a paralegal program?

JUROR/GORDON: Yes, I did.

THE COURT: All right, thank you. Anyone else?

During the trial it's quite likely, based upon the nature of the charges, that there will be witnesses who will testify who have some position with a law enforcement agency. And what I want to point out to you now and then ask about is that fact that the person that works for—or the fact that a person works for a law enforcement agency does not for that reason alone mean that that testimony is deserving of, for that reason, more or less consideration or greater or less weight than that of any other witness who may testify in the proceeding.

It is a fact or a circumstance that they bring with them, and it may be appropriate at some time for the

people to argue or infer in some way that they have some interest or bias in the case.

THE COURT: But again, simply because they work for a law enforcement agency doesn't mean, as I say, that their testimony should be accepted for that reason or rejected for [56] that reason. Any of you disagree with that proposition, and would have any difficulty following that as you heard the testimony of those folks?

Essentially everyone who comes to court, some of them may have things about their background or their circumstances that would affect their believability or credibility or could. Jurors are told to—how to consider that testimony, if it does come in. But again, everyone brings different backgrounds with them when they come to court. They're sworn to testify. And starting out they're all entitled to the same consideration, the same interest as anyone else, whatever their background may be.

Whatever is developed during the cross-examination, of course, then it's appropriate to consider that. But just to reject someone or accept one's testimony because of a status and nothing else would be simply wrong. Again that's not how our system operates.

Do any of you on the jury panel have any sort of problem, hearing problem, being comfortable in the courtroom setting as long—hour, hour-and-a-half at a time and being able to hear and be comfortable about that? Generally we have a pretty good hearing system here, but it isn't perfect.

The other thing that's kind of obvious about a trial or will become obvious, most people when they come to court—and too many lawyers—and I keep getting after the [57] lawyers particularly, don't speak up. And if you come to court and you can't be heard no matter why you're here, you might as well stay home. That's how simple that is.

But again recognizing that from time to time, we tell people—and witnesses come and they're nervous and they don't speak up. So we try to get them to. But in any event, any of you have any sort of problems that you think would cause you to have some difficulty or be uncomfortable as a juror? Ms. Gordon.

JUROR/GORDON: Yeah, I have MS. And when I sit for too long a period of time my legs become numb.

THE COURT: Would an hour or so at a time—that's generally about how long, an hour, hour-and-a-half max.

JUROR/GORDON: I should be all right, yeah.

THE COURT: Sure, yeah. We don't go longer than that. Okay.

All right. Now, where we are, any of you again—we're about to get the lawyers together and look at the questionnaires again. Any of you, for whatever reasons, think you simply would prefer to serve on some other jury, or not this jury, or not serve now? Any of you have those kinds of things that you want to tell us about, tell me about before we start looking at the questionnaires? Okay.

Well, what—it's 11:20. And so I want to talk to the lawyers. I'm going to ask you all to be back at 1:00. [58] And during that time I will talk to the lawyers about the questionnaires, see who we want to call in, and then at 1:00 we will start asking some of you to come in so that we can ask additional questions about the information on the questionnaires. We'll go through that. That'll go fairly quickly.

And then as soon as we get that done, there may be a few additional questions that the lawyers have in mind, but then we should be ready to make our selections. And so that should be certainly by 3:00 or something like that.

We should get everybody else about mid-afternoon or thereabouts to go about your business, and the rest of you—and those folks, then, wouldn't have to come back. And so that's what we're trying to do. So keep that in mind again now that you know little bit more about the case.

Don't talk about it. Don't share experiences that you may have had, friends or family or otherwise with any sort of things that may relate to something we're interested in here, and just don't do that, and come back.

And when you come back at 1:00, again—pardon me—remember where you're seated. Be seated there and then we'll start calling the folks in. The rest of you, we'll just ask you to sit here, and you can read or do whatever you wish to while you wait patiently till we get through that part of the process.

[59] So we'll take our noon recess now a little early so we can start on this other inquiry. We'll, I'll excuse you now while I talk to the lawyers about who they want to get in. So see you at 1:00

(Jury Panel Out at 11:26 a.m.)

THE COURT: All right. Just be seated, please.

All right. What about Mr. Sundeen, juror number four? He's the lawyer who said he had a case Monday? Your thoughts about excusing him? Any objections one way or the other on that?

MR. KIRBY: I have no objection.

MR. GARCIA: No objection, Your Honor.

MR. BARTOLOMEI: None, Your Honor.

THE COURT: All right. Well, then when he comes back we'll excuse him.

And then the other one who wanted to perhaps be excused was Mr. Sink, juror number 14, who has a two-week vacation. I will keep him around at least and see what happens. We'll probably have enough jurors that we can accommodate him when we get that far.

All right. Now, you've got your questionnaires. Why don't we do this. Look through them, and let's get back together at 20 minutes of 1:00, and see which ones we want to call in individually, and then we'll start doing that when we get back together at 1:00. So let's get

together with the [60] lawyers at 20 minutes of 1:00 to decide who we want to call in, and we'll go ahead and get that done. Okay?

Anything else that we need to touch upon? And I'll look and see what questions were proposed, and you might think about any that we haven't touched upon now that we might want to ask everybody generally. Okay?

So see you at 20 minutes of 1:00.

(Recess from 11:29 a.m. to 2:02 p.m.)

(Jury Room Proceedings at 12:45 p.m.)

THE COURT: All right. Have you all had a chance now to look at the questionnaires?

MR. GARCIA: Yes, sir.

MR. KIRBY: Yes, sir.

THE COURT: All right. We'll just go through them alphabetically. And anyone that you want brought in, why tell me and we'll pull that one out.

The first one is Allen.

MR. KIRBY: I'd like to see Mr. Allen.

THE COURT: Baker, number 45; Merle Baker, number 17; Julie Ball, number 33; Darryl Bingham, number 36.

MR. GARCIA: Can we have one moment, Your Honor? We didn't realize we were going to go in alphabetical order.

THE COURT: Well, I've given you the numbers as we go, also. All right?

MR. GARCIA: Yes, Your Honor.

[61] THE COURT: Baker is number 45, Bonnie Baker.

MR. BARTOLOMEI: I have Velez as 44.

MALE VOICE: Yeah, 44 you mean, Your Honor.

THE COURT: Well, whatever, you got it? You want her?

MR. GARCIA: No.

THE COURT: Merle Baker, 17.

MR. GARCIA: No.

THE COURT: Julie Ball, 33.

MR. GARCIA: No, Your Honor.

THE COURT: Darryl Bingham, 36.

MR. BARTOLOMEI: Yes, Your Honor.

THE COURT: Joe Bollinger, 22.

MR. GARCIA: Yes, Your Honor.

THE COURT: Ms. Chmielewski, 24.

MR. KIRBY: Your Honor, she didn't fill out—unless I missed something, she didn't fill out the back side.

THE COURT: Want her to come in?

MR. KIRBY: Yes.

THE COURT: Jeannie Collins, 42.

MR. BARTOLOMEI: Yes.

THE COURT: What is there about Ms. Collins, something she said? "Oh, I agree with the laws."

MR. BARTOLOMEI: I wasn't sure how she meant it.

MR. GARCIA: Your Honor, there was also—I have [62] some—she had mentioned something about her spouse being disabled and recently unemployed. I was wondering if this was going to provide a financial hardship, and therefore, interfere with her.

THE COURT: She's been asked all those kinds of questions, and she hasn't volunteered any reason to be excused for that.

Conn, 23.

MR. KIRBY: I'd like to see Mr. Conn.

THE COURT: Dunst, 13.

MR. KIRBY: No.

THE COURT: Eckard, number 10.

MR. KIRBY: No.

THE COURT: Mr. Fan, number 38; Mr. Finck, number 25; Mr. Gilbert, number 31.

MR. GARCIA: I would like to see Mr. Gilbert, Your Honor.

THE COURT: Mr. Gilmore, number 16; Ms. Gordon, number five.

MR. KIRBY: I'd like to see her.

THE COURT: Ms. Hanserd, number 29.

MR. KIRBY: I'd like to see Ms. Hanserd.

THE COURT: Mr. Hultz, number 21; Mr. Johann, number three.

MR. GARCIA: I would like to see Mr. Johann, Your [63] Honor, going to the relationship with his son while in DPS.

MR. BARTOLOMEI: I would too.

THE COURT: Mr. Johnson, number eight, Martin; Ms. Keil, number 28.

MR. GARCIA: I would like to see Ms. Keil for the same reason as Mr. Johnson.

THE COURT: She's got a son in DPS?

MR. GARCIA: No. She—

MR. BARTOLOMEI: Her spouse is a probation officer.

MR. GARCIA: Yes, her spouse is a probation officer.

THE COURT: I thought—

MR. GARCIA: Number—

THE COURT: — they were separated. Isn't that the same one? Yeah, they're separated, Dean Angelo. Okay. Mr. Kelly, number two; Mr.—Ms. Kolomitz, number 20; Mr. Lanford, number nine.

MR. KIRBY: I'd like to see Mr. Lanford.

THE COURT: Ms. Lindsey, number 43.

MR. KIRBY: Ms. Lindsey didn't do the back.

THE COURT: Mr. Mann, number one; Ms. Morlan, number 37.

MR. KIRBY: I'd like to see Ms. Morlan.

THE COURT: Thirty-five, Mr. Olivas; Ms. Pelander, number 30; Mr. Rendek, number seven; Mr. Riley, I had 32 [64] question mark. He's the only Riley I could find, but I had a different first name.

MR. KIRBY: Mr. Riley didn't fill out the back.

THE COURT: Ms. Schaller, number 19; Mr. Schlueter, number 39; Mr. Schotz, number 11; Mr. Schroeder, number 18; Ms. Simmonds, Simmonds, number 26; Mr. Sink, number 14; Jeffrey Smith, number 40; Mary Ellen Smith, number 15. Neal Sundeen we were going to excuse. Silvio Vaninetti.

MR. GARCIA: What number is that, Your Honor?

THE COURT: What—do you think we'll be able to get done Friday, at least get it to the jury?

MR. KIRBY: Get it to the jury definitely by Friday.

THE COURT: Reba Varela, number 12.

MR. GARCIA: I would like to see —

THE COURT: Mr. Velez, number 45; Mr. Welter, number 27; Ms. Wineman, number 41.

THE CLERK: She's a single parent, and to be away from work would be a hardship.

THE COURT: When did she say that?

THE CLERK: She came up to the bench on her break just before lunch.

THE COURT: What's her number?

THE CLERK: Her number is 20.

THE COURT: Apparently Ms. Kolomitz came up to the [65] clerk, and the clerk talked to Ms. Kolomitz. And Ms. Kolomitz said that she's a single parent and it might work a hardship or it could work a hardship to be here. So we'll ask her to come in and see about that, number 20, Kolomitz.

We also—we can talk about it later. We have the juror who teaches at the community college who inquired about being off, and we'll see how we're doing there.

All right. Well, we'll call these folks in, then. If there's any others that we need to call in, why we can bring some additional ones in and talk with them as well.

Going to check there, Bobby, and see if they're all here, and we can start in.

THE CLERK: We're missing two people.

THE COURT: Well, we can get started.

THE CLERK: Yes.

THE COURT: Sure. Okay, we'll get started. James C. Allen. Hi, Mr. Allen. Be seated, please.

JUROR/ALLEN: Okay.

THE COURT: On your questionnaire, you said your son smokes marijuana once in a while.

JUROR/ALLEN: Uh-huh.

THE COURT: About how old is he?

JUROR/ALLEN: Twenty-one. He's a college student.

THE COURT: Uh-huh. And then over on the back of [66] your questionnaire, you have an opinion, et cetera, and then you said, "personal." Is that something you wouldn't want to share with us? Is that what you're saying?

JUROR/ALLEN: No. It's just that kind of like the marijuana law is a little strict and that's the only thing about that.

THE COURT: Okay. Your son's use and so forth, do you think the fact that he does that would affect your ability to listen here and decide whether someone was or wasn't trying to sell heroin or any of the other issues we're going to have in the case?

JUROR/ALLEN: Not at all.

THE COURT: Okay. Mr. Kirby, any questions?

MR. KIRBY: No questions.

THE COURT: Mr. Bartolomei?

MR. BARTOLOMEI: None, Your Honor.

THE COURT: Mr. Garcia?

MR. GARCIA: Mr. Allen, what are your attitudes towards those individuals that sell the marijuana to your son?

JUROR/ALLEN: I've really never thought about it. It's recreational. I've really not thought about it.

MR. GARCIA: I have nothing further.

THE COURT: All right, thank you. If you'd just wait outside, Mr. Allen, we'll be going right along here.

[67] The next one is—what is, "friends, cocaine, mostly"—what's the next word?

MR. KIRBY: I was guessing recreational.

THE COURT: Okay. Well, in any event, Darryl Bingham, number 36. Hi, Mr. Bingham.

JUROR/BINGHAM: Hi.

THE COURT: You—we decided you're nothe best penman we've had. What is that word right there?

JUROR/BINGHAM: "Mostly recreational."

THE COURT: Okay. Well, that's what someone said. I wasn't sure. And then on five, "Guilty, guilt by

association." Could you just explain a little bit more about that?

JUROR/BINGHAM: Well, I might be speaking of my opinion, but anybody that's around drugs, usually there's some type of a guilt associated with it, in my opinion.

THE COURT: And you understand—

JUROR/BINGHAM: And if you're not guilty, then you shouldn't be anywhere around it.

THE COURT: You understand here that the question to be decided is whether or not the defendants were around it and/or were doing things under the instructions of the Court that were wrong. And for instance, juries are told that if someone is just standing around and happened to be in an area where something is happening, their mere presence—you [68] can't convict anyone simply for being present at a location. Would you follow that instruction?

JUROR/BINGHAM: I would follow that instruction.

THE COURT: Okay. Mr. Bartolomei, any questions?

MR. BARTOLOMEI: Would you be able to set aside your personal feelings in hearing this case?

JUROR/BINGHAM: I don't believe so.

MR. BARTOLOMEI: You don't believe you would.

JUROR/BINGHAM: I don't believe I would.

MR. BARTOLOMEI: Let me ask you this as well. Do you think—

THE COURT: You have to keep your voice up, also.

MR. BARTOLOMEI: I'm sorry, Your Honor.

Do you think that perhaps at home you might be—or at work you might be subject to some ridicule or scorn—

JUROR/BINGHAM: No.

MR. BARTOLOMEI: —or some harassment from that?

JUROR/BINGHAM: No.

MR. BARTOLOMEI: But you do feel—you have very strong feelings about this. Is that a yes?

JUROR/BINGHAM: Yes, yes.

MR. BARTOLOMEI: Nothing further, Your Honor.

THE COURT: Mr. Garcia.

MR. GARCIA: You feel that there could be guilt by association as to drugs; is that right?

[69] JUROR/BINGHAM: Uh-huh, that's correct.

MR. GARCIA: Do you feel that there could also be guilt by association as to a firearm involved in a drug transaction?

JUROR/BINGHAM: I'm sorry, I don't quite follow that.

MR. GARCIA: Well, let's assume that there's a drug transaction. Let's assume that there is a firearm involved in that drug transaction.

JUROR/BINGHAM: Okay.

MR. GARCIA: Would the person who would be involved in the drug transaction by association also be involved with the —

JUROR/BINGHAM: I believe so, I believe so.

MR. GARCIA: Thank you. I have nothing further, Your Honor.

THE COURT: Mr. Kirby.

MR. KIRBY: Just so I'm clear, Mr. Bollinger (sic), I know you have strong opinions. But what you're saying is that even though the Judge would instruct you in certain fashions that just being around it may not be enough to convict someone, would you be able to follow what the judge tells you to do despite your opinions?

JUROR/BINGHAM: I don't believe so.

MR. KIRBY: Nothing further, Your Honor.

[70] THE COURT: All right, thank you. Then if you'd just wait outside.

All right. Our next one is Joe Bollinger, number 22.

MR. KIRBY: We did him.

THE COURT: Why did we have him? Someone wanted him?

MR. KIRBY: We just did him.

THE COURT: Oh. That wasn't Bollinger, was it? That was Mr. Bingham.

MR. KIRBY: I'm sorry.

MR. BARTOLOMEI: That was Bingham.

THE COURT: Bollinger, did we want Bollinger? Pardon me.

MR. BARTOLOMEI: Yes. There was—I had one question for him.

THE COURT: All right. Let's ask Mr. Bollinger to come in.

All right. Mr. Bollinger, be seated. Sounded to me like you grew up in New Mexico.

JUROR/BOLLINGER: That's right.

THE COURT: How'd you ever escape that nice state and come over here?

JUROR/BOLLINGER: Oh, I had an opportunity to come over to go to work. So I just thought I'd try it.

[71] THE COURT: How long you been here?

JUROR/BOLLINGER: I moved to Arizona in '66.

THE COURT: Issue still in doubt?

MR. BARTOLOMEI: Yes, Your Honor, if I may.

Mr. Bollinger, I'm sorry. I wasn't very clear. You indicated that your brother was a New Mexico cop.

JUROR/BOLLINGER: Yes. He was a city policeman in Clovis for about 15 years, but he hasn't been doing that for the last 20 years.

MR. BARTOLOMEI: Oh, so he's retired?

JUROR/BOLLINGER: Yes.

MR. BARTOLOMEI: I was wondering whether he had been hurt in the line of duty or anything like that.

JUROR/BOLLINGER: No.

MR. BARTOLOMEI: Did you discuss criminal cases with him at all on a regular basis?

JUROR/BOLLINGER: No.

MR. BARTOLOMEI: I have nothing further, Your Honor.

THE COURT: Anyone else?

MALE VOICE: No.

THE COURT: All right. If you'll just wait outside, thank you very much, sir.

All right. Our next one is Susan Chmielewski, number 24. Sit down, Ms. Chmielewski.

[72] JUROR/CHMIELEWSKI: Okay.

THE COURT: You didn't fill out the back of your questionnaire.

JUROR/CHMIELEWSKI: Oh, you know I didn't know there was a back to it.

THE COURT: Well, that's the reason we put "over" down.

JUROR/CHMIELEWSKI: Oh, well, you know.

THE COURT: But in any event, just take your time and go through it.

JUROR/CHMIELEWSKI: Okay.

THE COURT: All right.

JUROR/CHMIELEWSKI: Okay.

THE COURT: Uh-huh, thank you. All right. Question number five, for those interested, "yes, should be —"

JUROR/CHMIELEWSKI: Re-examined.

THE COURT: "—reexamined," six, no; seven, no; eight, no.

Mr. Garcia.

MR. GARCIA: I have no questions.

MR. BARTOLOMEI: No questions.

THE COURT: Mr. Bartolomei? Mr. Kirby.

MR. KIRBY: I just wasn't clear, Your Honor. Is the answer to number five "reexamine"?

[73] THE COURT: "Yes, should be reexamined."

MR. KIRBY: If I might, Ms. Chmielewski, could you explain what you mean by that?

JUROR/CHMIELEWSKI: Well, I think the law has to look at the drug problem as we know it now. We've got penalties for, you know, a little bit of possession and penalties for a large possession or whatever, and I think we have to reexamine that much like we did with alcohol years ago. You know, a little bit can end up being a whole lot later on. I think the laws should be the same for whatever quantities or whatever part you're playing in the drug problem.

MR. KIRBY: Would that cause you any difficulties in sitting and assessing a case, listening to the evidence, following the laws given by the judge?

JUROR/CHMIELEWSKI: Not necessarily, because the law stands as it is now, and we're bound by that law until those laws are changed.

MR. KIRBY: Nothing further, Your Honor. Thank you.

THE COURT: All right. Thank you very much. If you'll just wait outside a few more minutes.

Our next one is Jeannie Collins, number 42. Hi, Ms. Collins. Be seated, please.

Mr. Bartolomei, any questions?

[74] MR. BARTOLOMEI: Yes, Your Honor, just one.

Ms. Collins, could you please explain what you mean by your answer number five, you agree with the laws? Can you elaborate on that a little bit?

JUROR/COLLINS: I really wasn't sure. Just the laws that are made, they are there for a reason. I really don't have a big opinion. It just—I mean I didn't know what to write on there. The laws are made for a reason, and that's why we're to abide by them.

MR. BARTOLOMEI: I understand. Thank you.

THE COURT: All right. Anyone else?

MR. KIRBY: No, Your Honor.

THE COURT: All right. Mr. Garcia.

MR. GARCIA: You had mentioned earlier that your husband was recently unemployed. Is that—

JUROR/COLLINS: Uh-huh.

MR. GARCIA: Would that situation cause you some financial burden such that it would interfere with your ability to concentrate on the trial?

JUROR/COLLINS: No.

THE COURT: All right. Thank you very much. Wait outside for just a few more minutes.

Our next one is Richard Conn. Him, Mr. Conn.

JUROR/CONN: Hi.

THE COURT: Mr. Garcia, any questions?

[75] MR. GARCIA: No questions, Your Honor.

THE COURT: Mr. Bartolomei.

MR. BARTOLOMEI: None from me, Your Honor.

THE COURT: Mr. Kirby.

MR. KIRBY: Thank you, Your Honor.

I just wanted to clarify, Mr. Conn, question number five, about law enforcement practices being directed at the wrong people. Could you explain what you mean by that?

JUROR/CONN: I think more of—it would be—we would be better served to combat the drug problem by attacking more of the higher-ups and prosecuting those type of people versus the end-users. I think a lot of times some of it's misdirected. A lot of the end users are victims of the drugs and the people higher up. That's what I mean by that.

MR. KIRBY: Would you have any difficulties following any laws given to you by the judge at the end of the case?

JUROR/CONN: No, sir.

MR. KIRBY: Thank you.

THE COURT: All right. If you'll wait outside then. Thank you very much.

Number—Mr. Gilbert, Don Gilbert. Hi, Mr. Gilbert.

JUROR/GILBERT: Hi.

[76] THE COURT: On your questionnaire, you said in question number eight, the answer:

"I would favor the prosecution."

Is that—are you saying that you would not be able to listen to the evidence, and decide what happened, and

follow the instructions of the Court, but would simply vote for a conviction because people are charged with drug crimes?

JUROR/GILBERT: No. I think what I'm saying is all things being equal, I would probably tend to favor the prosecution.

THE COURT: You understand that one of the things the jury will be told, of course, is that the prosecution, the Government has the burden of proving someone guilty beyond a reasonable doubt. And I suppose realistically, all things being equal wouldn't be beyond a reasonable doubt. Would you disagree with that?

JUROR/GILBERT: No, I guess I wouldn't disagree with that.

THE COURT: I guess the important question is —and perhaps let me ask it this way. It's kind of my question. But if you were the defendants here charged with this crime, and all of the jurors on your case had your background and your opinions, do you think you'd get a fair trial?

JUROR/GILBERT: I think that's a difficult [77] question. I don't think I know the answer to that.

THE COURT: All right. Mr. Kirby, any questions?

MR. KIRBY: No, Your Honor.

THE COURT: Mr. Bartolomei.

MR. BARTOLOMEI: No questions, Your Honor.

THE COURT: Mr. Garcia.

MR. GARCIA: If you were going to error the close call between—

THE COURT: Well, we're not going to get into close calls either, those kinds of argumentative propositions, Mr. Garcia.

MR. GARCIA: If you were to error, where would you feel more comfortable erring, in favor of the prosecutor or the defendant?

JUROR/GILBERT: Well, again, not having heard any evidence in the case, I think that's kind of hard to say. I think, as I indicated on here, I would probably be more favorable to the prosecution. I suppose most people are. I mean they're predisposed. You assume that people are on trial because they did something wrong.

THE COURT: Well, you see, you heard me out there when I started the trial. That's not the general proposition. If it is, it's wrong. It's contrary to our whole system of justice. When people are accused of a crime, there's no presumption—

[78] JUROR/GILBERT: There's a—

THE COURT: —of guilty. The presumption is the other way. That's the way our system—

JUROR/GILBERT: I understand that in theory.

THE COURT: Okay, all right, all right. Why don't you wait, and we'll be done here in a few minutes; okay? Thank you very much.

Number 29, Etoy Hanserd.

MR. KIRBY: Judge, did we skip Ms. Gordon?

THE COURT: Who?

MR. KIRBY: Cindy Gordon?

THE COURT: I don't know whether I skipped her or not. I didn't call her. Oh, I guess I did. We'll come back. I guess I put him over and—Mr. Gilbert, and got Ms. Gordon in there too. Well we'll come back to that.

Sit down, please. You were scared.

JUROR/HANSERD: Yes.

THE COURT: You're not scared now, are you? No reason to be scared. That's the reason I banged on the table, because I didn't want you to be scared.

JUROR/HANSERD: Okay.

THE COURT: Let's see. You're a lab assistant. Tell me what you do.

JUROR/HANSERD: I draw blood. I do urinalysis, pregnancy tests, set rates.

[79] THE COURT: You have to keep your voice up.

JUROR/HANSERD: And collect specimens to send to the other outside labs.

THE COURT: Which lab do you work for?

JUROR/HANSERD: 7th Avenue and Buckeye.

THE COURT: Where did you go to school?

JUROR/HANSERD: Mesa High, and then phlebotomy at Phoenix College.

THE COURT: How long have you been doing this?

JUROR/HANSERD: Probably about 11, 12 years.

THE COURT: Do you like it?

JUROR/HANSERD: Yes.

THE COURT: Have any children?

JUROR/HANSERD: Yes.

THE COURT: What ages are they?

JUROR/HANSERD: Thirty-two, thirty-four and thirty-five.

THE COURT: I expected them to be in high school or less. Do they have any children?

JUROR/HANSERD: No.

THE COURT: What part of town do you live in?

JUROR/HANSERD: What part?

THE COURT: What part of town? What city do you live in?

JUROR/HANSERD: I live in Mesa.

[80] THE COURT: Mesa, east Mesa?

JUROR/HANSERD: I live on Center and off University.

THE COURT: Down by—not too far from the university then. Oh, Center, no. That is—yeah, I was thinking of Tempe. Center is the main kind of north-south street in town. I guess that's the reason they call it Center street. Huh?

JUROR/HANSERD: Yes.

THE COURT: You—I'd ask generally the question about making—you know—arriving at a decision in a case where someone's freedom might be affected. And on answer to question number seven, you said, because of your religious beliefs, "I would find it hard to judge others."

JUROR/HANSERD: Yeah. I don't—it's not something I would like or enjoy doing, judging others. I don't feel that I can—

THE COURT: I was going to say—

JUROR/HANSERD: —be fair.

THE COURT: —right. Well, I don't think anybody really enjoys it. I really don't.

JUROR/HANSERD: You know, I wouldn't feel—I don't think that I can—should.

THE COURT: You'd do it.

JUROR/HANSERD: If I really, really had to, but [81] if had a choice, I don't know.

THE COURT: But you think you could do it if you sat as a juror, you could listen to the evidence and simply decide what happened. That's really what a jury does, what happened. Would you do that?

JUROR/HANSERD: Yes.

THE COURT: The work you do in a way involves information that's being gathered. Is all of it gathered for medical purposes, or is some of it gathered for police agencies, things like that?

JUROR/HANSERD: Medical reasons.

THE COURT: Huh?

JUROR/HANSERD: Medical reasons.

THE COURT: Medical reasons?

JUROR/HANSERD: Okay. Mr. Kirby.

MR. KIRBY: No questions, Your Honor.

THE COURT: Mr. Bartolomei.

MR. BARTOLOMEI: None, Your Honor.

THE COURT: Mr. Garcia.

MR. GARCIA: None, Your Honor.

THE COURT: All right. Thank you very much for coming in. And seriously, I hope that if you have a chance to come back again, either here or in another trial, that you'll do it, because we really need people who live in a community and who are caring decent people to serve on [82] juries.

JUROR/HANSERD: Well, one of the problems I'm having right now, we just had a death in the family, and I'm still sort of in a grievance, and I'm not sleeping at all. I don't think I would be at my best at this time.

THE COURT: Okay. We'll keep that in mind as well. Thank you very much for coming in.

JUROR/HANSERD: Thank you.

THE COURT: Okay. Our next one I passed over, Cindy Gordon, number five. Hi. Be seated, please.

Mr. Bartolomei, any questions?

MR. BARTOLOMEI: None, Your Honor.

THE COURT: Mr. Garcia.

MR. GARCIA: You had mentioned that you had begun paralegal school. Will you tell us a little bit about your training and what type of paralegal you were preparing to come?

JUROR/GORDON: For a slip-and-fall personal injury field. That's what I took the courses for.

MR. GARCIA: Nothing further.

THE COURT: Mr. Kirby.

MR. KIRBY: Thank you. I'd just like to clarify. Question number five was your opinion regarding the laws relating to the use and possession and distribution of drugs, and you said, "I don't see the need for this kind of crime." [83] Could you explain what you mean by that? Are you talking about from a prosecution side, why we prosecute it, or why do people do it?

JUROR/GORDON: No, basically why people do it. There's enough out there, you know, with the murder and the bloodshed, we don't need anymore crime as far as drugs are concerned. I just have—you know, I have a pretty big issue on that. I just don't see the need.

MR. KIRBY: For people to do drugs?

JUROR/GORDON: Yeah, and why they go out there and sell them to people, especially younger children.

MR. KIRBY: How about the current need to prosecute drug cases?

JUROR/GORDON: Oh, yes, I believe that, yeah.

MR. KIRBY: Okay. Thank you.

THE COURT: All right. Thank you very much. If you'll just wait for a few more minutes, we'll be done here.

JUROR/GORDON: Okay.

THE COURT: The next one is Robert Johann, who's had the son with DPS. Hi, Mr. Johann. Be seated, please.

You told us, when we were asking questions generally to the jury, I think that you had a son who was a detective now with the DPS; is that correct?

JUROR/JOHANN: That's my son-in-law.

THE COURT: Son-in-law. Okay. And as you [84] understand it, did he go through the academy, the training program for highway patrol officers?

JUROR/JOHANN: Yes.

THE COURT: And then was he a uniformed officer for some time?

JUROR/JOHANN: Yes.

THE COURT: And now does he work undercover?

JUROR/JOHANN: No, he's not undercover.

THE COURT: He's married to your daughter?

JUROR/JOHANN: Yes.

THE COURT: Do they have children?

JUROR/JOHANN: Yes, three.

THE COURT: I take it they visit back and forth at family gatherings and things like that.

JUROR/JOHANN: Yes.

THE COURT: Do you think the fact that your son is a police officer in the sense that would impact on your serving as a juror in this case in being fair and impartial?

JUROR/JOHANN: No, I don't think so.

THE COURT: For instance, let's assume you listened to the evidence along with all the other jurors and decided the Government hadn't proved him guilty. Do you have any feeling—do you think that you'd be embarrassed or concerned about telling your son or family that you'd come down here in federal court and found somebody not guilty of a [85] drug charge?

JUROR/JOHANN: No.

THE COURT: You ever have any concerns just in passing about the safety of your son-in-law and the kind of work that he's in and the people that he may deal with?

JUROR/JOHANN: Well, he's in white-collar crime now. So you know, it's a lot safer than being on the highway.

THE COURT: All right. Mr. Kirby, any questions?

MR. KIRBY: No, Your Honor.

THE COURT: Mr. Bartolomei.

MR. BARTOLOMEI: Briefly, Your Honor.

Mr. Johann, has your son-in-law ever been injured while on patrol or on duty?

JUROR/JOHANN: No.

MR. BARTOLOMEI: Does your daughter ever express to you her concerns and fears about him being out on the field?

JUROR/JOHANN: No.

MR. BARTOLOMEI: Do you discuss particular cases with him?

JUROR/JOHANN: Well, when he was out on the highway, you know, he'd say he stopped this guy and

gave him a ticket for this and whatever, but now he doesn't say anything to me.

MR. BARTOLOMEI: I can understand that. Thank you. [86] Nothing further.

THE COURT: Mr. Garcia.

MR. GARCIA: Nothing.

THE COURT: All right. Thank you. If you'll just wait outside a few more minutes. Thank you.

THE COURT: Ms. Keil-Angelo.

You know the thing that's impressed me, what in the world would we do if all of a sudden everyone that works with computers in some way stopped. Half of our jury is involved with computers. It really is frightening.

Sit down. I was just telling these other good folks here, you know, half of our jurors or a third of our jurors at least are involved with computers, programmers or whatever. And I was wondering what would happen if all the electricity went off for a week.

Mr. Kirby, any questions?

MR. KIRBY: No, Your Honor.

THE COURT: Mr. Bartolomei.

MR. BARTOLOMEI: Yes, Your Honor.

Ms. Keil, you indicated your spouse was a federal probation officer.

JUROR/KEIL: Uh-huh.

MR. BARTOLOMEI Is that here in Phoenix?

JUROR/KEIL: Yes, it is.

MR. BARTOLOMEI: And how long was he doing that [87] before your separation, or how long had he been doing it?

JUROR/KEIL: Maybe a year.

MR. BARTOLOMEI: Okay. Did you ever discuss particular cases with him that he was working on, drug cases in particular?

JUROR/KEIL: No.

MR. BARTOLOMEI: He never brought his work home?

JUROR/KEIL: No. I have two little children. He can keep that away.

MR. BARTOLOMEI: I have nothing further, Your Honor.

THE COURT: Mr. Garcia.

MR. GARCIA: I'm sorry. I didn't understand by "keeping that away" what you meant.

JUROR/KEIL: He can keep his work at home —

MR. GARCIA: Oh, his work.

JUROR/KEIL: —I mean his work at work, as I keep mine at work.

MR. GARCIA: Thank you.

THE COURT: Mr. Kirby.

MR. KIRBY: Nothing.

THE COURT: All right. Thank you. We had Dean in yesterday. He was one of our officers that came in.

JUROR/KEIL: Oh.

THE COURT: We see him from time to time.

[88] Thank you for coming down. If you'll just wait outside a little longer. Thank you.

Our next one is Mr. Lanford, number nine. Hi, Mr. Lanford.

JUROR/LANFORD: How are you all doing?

THE COURT: Good. Let me ask, question number eight—

JUROR/LANFORD: Okay. I don't know how to write very well.

THE COURT: That's all right.

JUROR/LANFORD: Okay.

THE COURT: —about police officers principally.

JUROR/LANFORD: Okay.

THE COURT: Do you think that you'd be able to decide whether—objectively, reasonably, fairly whether a police officer was or wasn't lying?

JUROR/LANFORD: Yes, I believe so.

THE COURT: Because you seem to express the general opinion at least that you don't have a very high opinion of police officers.

JUROR/LANFORD: Correct. Mostly uniformed officers is—I've experienced not quite a bit of trouble, but on a few instances where I have been involved with, you know, patrol officers, I've had trouble.

THE COURT: When they pull up behind you and their [89] lights start flashing, you get nervous.

JUROR/LANFORD: Oh, yeah.

THE COURT: So do I.

JUROR/LANFORD: yeah, I get—

THE COURT: Everybody does.

JUROR/LANFORD: But I think it's primarily my outlook, how I—you know, my hair is long. I have a earring and so forth.

THE COURT: I wear a robe all day long, and then I get in my car and they stop me. I have the same problem.

JUROR/LANFORD: I just get nervous. I don't think I would have a problem with any judgment I would make.

THE COURT: Okay. Well, you told us, and that's the important thing.

Anything else, Mr. Kirby?

MR. KIRBY: Just one quick question. You said your brother had been arrested for marijuana some time in the past.

JUROR/LANFORD: Yes, sir.

MR. KIRBY: Would that cause you any problem in sitting on a drug case?

JUROR/LANFORD: No. What had actually happened is he didn't go to court on it or trial or even go to jail for it. They just took him down, called my mom. My mom came and got him. That was the end of the story.

[90] MR. KIRBY: Nothing in that bothered you?

JUROR/LANFORD: Oh, no.

MR. KIRBY: Thank you.

JUROR/LANFORD: I just had to mention it because—

THE COURT: That's fine. You answered the question.

Mr. Bartolomei.

MR. BARTOLOMEI: No questions, Your Honor.

THE COURT: Mr. Garcia.

MR. GARCIA: Nothing, Your Honor.

THE COURT: All right. Thank you very much for coming in.

JUROR/LANFORD: Thank you.

THE COURT: Remember, they flash at you. They flash at me too.

JUROR/LANFORD: I think it's just—

THE COURT: It's the nature of their job.

JUROR/LANFORD: —the nature of the game; right? Thank you.

THE COURT: Bye-bye.

Number 43, Mr. Lindsey—or Ms. Lindsey. Pardon me. She didn't fill out the back of her questionnaire. Sit down, Ms. Lindsey.

You didn't fill out the back of your questionnaire. So let me just ask you to do that, and then I'll tell [91] everybody what you put down. Take your time.

Okay. Five, no; six, no; seven, no; yes, no (sic).

Any other questions of Ms. Lindsey? Mr. Kirby?

MR. KIRBY: No, Your Honor.

THE COURT: Anyone else?

MR. BARTOLOMEI: None, Your Honor.

THE COURT: All right. Thank you very much, and we'll excuse you. Wait outside till we get done.

Our next one is Ms. Morlan, number 37.

Imagine how the world operates 15 years ago and here today.

Sit down, Ms. Morlan, please.

You say you're with the BLM.

JUROR/MORLAN: Uh-huh.

THE COURT: What's your thoughts about serving as a juror here, recognizing what you told us about your husband 15 years ago.

JUROR/MORLAN: I didn't know him then, and I wasn't really involved with it.

THE COURT: So that's something you've learned about since then.

JUROR/MORLAN: Yes. I've only known him for about five years.

THE COURT: And anything about his experiences or what happened to him, as you understand it back then, that [92] would affect your ability to be fair and impartial here?

JUROR/MORLAN: No, I don't think so.

THE COURT: As far as you know, did he do any time?

JUROR/MORLAN: No, he went to a rehabilitation center.

THE COURT: And he was younger then.

JUROR/MORLAN: Yes.

THE COURT: All right. Any other questions of this juror?

MR. KIRBY: No, Your Honor.

MR. BARTOLOMEI: None, Your Honor.

THE COURT: All right. I was saying what a strange thing it is, of all the cases we have, that you'd be selected to come for this particular trial.

JUROR/MORLAN: I don't know.

THE COURT: It's a strange world. All right. Thank you very much. If you'd just wait a few minutes for us.

Mr. Riley, please, number 33. He didn't fill out the back. Hi. Sit down.

JUROR/RILEY: Hi.

THE COURT: Mr. Riley, you didn't fill out the back of your questionnaire. So let me ask you to do that.

JUROR/RILEY: Oh, I'm sorry.

THE COURT: That's all right. Just do that and [93] take your time.

JUROR/RILEY: All righty.

THE COURT: And then we'll tell them all what you do.

JUROR/RILEY: Didn't bring my specs.

THE COURT: Want to borrow mine?

JUROR/RILEY: Might help.

THE COURT: I don't know whether they will or not.

JUROR/RILEY: Oh, yeah.

THE COURT: Got to give them back.

JUROR/RILEY: Would you explain that to me, Judge?

THE COURT: Sure.

JUROR/RILEY: I have an option. What's that mean?

THE COURT: What do you have an opinion regarding?

JUROR/RILEY: Oh, opinion.

THE COURT: Uh-huh.

JUROR/RILEY: Oh, I see.

THE COURT: Yeah.

JUROR/RILEY: Well —

THE COURT: Just say, "No." If you do, "Yes." And then you'd say, "Well, they ought to be this, that or whatever."

JUROR/RILEY: Yeah. Well, I have an opinion it shouldn't be, period.

THE COURT: Well, tell us that, then. Just say, [94] "Yes," and then tell us. You don't think we should have any laws related to drug sales?

JUROR/RILEY: Oh, oh, is that what that means?

THE COURT: Uh-huh. Well, whatever, just what your opinion is.

JUROR/RILEY: Well, I'm against drugs.

THE COURT: You're against drugs. Okay. Number six, against drugs. You don't have to write it down. I know it. Okay?

Let's give those glasses back.

JUROR/RILEY: Better give those back. Thank you, sir.

THE COURT: I got another pair. All right.

Well, yes, have an opinion. He told us they should be stricter. Six is, "No"; seven is, "No"; eight is, "No."

Any other questions then of Mr. Riley?

MR. KIRBY: No, Your Honor.

MR. BARTOLOMEI: Yes, I do. Excuse me, Mr. Riley.

JUROR/RILEY: Yes.

MR. BARTOLOMEI: When you say the laws should be stricter, are you talking about the punishment phase once they're convicted, if a person is convicted of a crime?

JUROR/RILEY: Well, I guess that's what I'm trying to say. I don't know how to put it the way you want to hear it I guess, but I'm just against drugs, period.

[95] MR. BARTOLOMEI: Okay.

JUROR/RILEY: I think they're destroying the body, you know.

MR. BARTOLOMEI: You have a very strong feeling about that.

JUROR/RILEY: Yeah, I do.

MR. BARTOLOMEI: Do you think you can set aside that feeling and be fair and impartial in listening to the evidence in this case?

JUROR/RILEY: Oh, yes, definitely.

MR. BARTOLOMEI: So that if the Government doesn't prove its case beyond a reasonable doubt, you would vote for a not guilty plea --

JUROR/RILEY: Yes.

MR. BARTOLOMEI: —not guilty verdict.

JUROR/RILEY: You bet. Yeah, I have no problem with that. I'm just—I'm against drugs for the body,

period because of what it's done to my body, you know. I mean I'm not talking about just cocaine or heroin or marijuana. I'm talking about drugs, period.

MR. BARTOLOMEI: Okay, thank you.

THE COURT: Mr. Garcia.

MR. GARCIA: I have nothing.

THE COURT: Mr. Kirby.

MR. KIRBY: No.

[96] THE COURT All right. If you'll wait outside just a few more minutes, Mr. Riley, we're just about done in here.

JUROR/RILEY: Okay, thank you, sir.

THE COURT: Uh-huh, thank you.

All right. Our next one is Ms. Varela, number 12. Sit down.

Mr. Kirby, any questions of the juror?

MR. KIRBY: No, Your Honor.

THE COURT: Mr. Bartolomei.

MR. BARTOLOMEI: None, Your Honor.

THE COURT: Mr. Garcia.

MR. GARCIA: What did you mean by "full extent of the law"?

JUROR/VARELA: As far as—let me see. If someone is convicted of a crime, I believe—and especially—and not necessarily a drug crime, but like a sexual abuse crime or something like that. I believe that in that case it should be punished to the full extent of the law, whatever that law allows for that crime.

MR. GARCIA: In this case there are multiple counts. Are you going to be able to look at each charge separately?

JUROR/VARELA: Certainly.

MR. GARCIA: Will you be able to give an opinion—a verdict to each charge separate as to whether you came up [97] guilty as to another charge? Do you understand what I'm saying?

JUROR/VARELA: Right, I understand. You're saying that there's three separate charges here.

MR. GARCIA: Three separate crimes.

JUROR/VARELA: Exactly. Sure.

MR. GARCIA: Nothing further.

THE COURT: All right. Just wait outside. Thank you very much. We're just about done.

The other one that we're going to ask to come in is Ms. Kolomitz. She's the one that came up and said it

might be a hardship for her to serve, number 20. Hi, Ms. Kolomitz.

JUROR/KOLOMITS: Hi.

THE COURT: I understand you talked to Ms. Hightower during the recess and said that you're a single parent. It might be a hardship for you to serve as a juror.

JUROR/KOLOMITS: Yes.

THE COURT: And you work where?

JUROR/KOLOMITS: I work at the Safeway store in Sun City West.

THE COURT: Do you know what their—what Safeway's policy is if you serve on a jury? Do they pay you and take your jury fees?

JUROR/KOLOMITS: I really don't, I really don't, huh-huh.

[98] THE COURT: What do you do there?

JUROR/KOLOMITS: I'm a grocery clerk. I'm a cashier.

THE COURT: Uh-huh. Do you have children?

JUROR/KOLOMITS: Yes, I have two boys.

THE COURT: What are their ages?

JUROR/KOLOMITZ: Nine and twelve.

THE COURT: How close do you live to where you work?

JUROR/KOLOMITZ: About a 35-minute drive.

THE COURT: You think you would be affected by serving as a juror, and it'd make it more difficult for you and your family?

JUROR/KOLOMITZ: Yeah, I think it would, but you know, if you need me, I can. It's no problem.

THE COURT: We pay I think \$35 a day and—\$40 a day and the mileage, 25 cents a mile and so forth. So it's a lot better to come to federal court than it is state court.

JUROR/KOLOMITZ: Yeah.

THE COURT: At state court, if you don't—for instance, we pay to come today. In federal—in state court, I went down there one day and sat around all day, didn't get—I went up to a courtroom and sat around for a while, and I got 18 cents. So I understand the problem. Well, we'll keep that in mind.

[99] JUROR/KOLOMITZ: Okay, thank you.

THE COURT: Okay? Thank you.

All right. Those are the folks that we pulled the questionnaires on who to ask questions. And we have

Mr. Sundeen, I think that said, can be excused. Do you still want to excuse Mr. Sundeen? Okay.

MR. KIRBY: That's fine.

THE COURT: All right. He's one.

The next one that we suggested that he would like to be excused perhaps is Mr. Sink, number 14, who just got back from a vacation. He works for Allied Signal, of course, which is a big company, et cetera. But what's your thought about excusing him? I think we obviously have a lot of—enough jurors to go around. Any particular reason to keep Mr. Sink?

MR. BARTOLOMEI: It's fine with me, Your Honor.

MR. KIRBY: I don't know how many more questions—I don't generally have an objection to letting him go. I just don't know how many more questions we have for them this afternoon.

THE COURT: I don't have any more essentially. I don't know of anymore to ask. I think I've gone through everything that—at least generally that was proposed. Do you have anything else?

MR. KIRBY: I was going to ask you to inquire about [100] guns.

MR. GARCIA: I believe I had some questions about violent crimes, Your Honor.

THE COURT: Okay.

MR. KIRBY: In general I don't have any objection in letting go of Mr. Sink when we get to the end—

THE COURT: Okay.

MR. KIRBY: —if we don't lose 10 people or something.

THE COURT: Okay. We had guns in our last case, didn't we?

THE CLERK: Uh-huh.

THE COURT: So we'll find whatever we asked about guns there. Maybe see if Sally could pull out that questionnaire we had that had the guns in it, huh?

We had—oh, the next juror also, number 15, Mrs. Smith, considered asking to be excused because of her final schedule in grading papers down at South Mountain Community College. Any objection to her one way or the other?

MR. KIRBY: I have no objection.

THE COURT: Mr. Bartolomei.

MR. BARTOLOMEI: I kind of want to keep her, but if it's going to pose a real hardship, then I'll go along with that.

[101] THE COURT: Well, I think she was ambivalent. I don't think that she was insisting that she be excused.

MR. BARTOLOMEI: It didn't seem that way to me.

THE COURT: No, I didn't think so. So you want to keep her.

MR. GARCIA: I would as well, Your Honor.

THE COURT: Okay. How about the lady we just had, Ms. Kolomitz? Any objection to excusing her?

MR. KIRBY: No.

MR. BARTOLOMEI: No objection.

THE COURT: Was there anyone else that wanted —oh, how about Ms. Hanserd, number 29, the lady we just talked to, the lab assistant and said she'd had a recent death in the family, et cetera.

MR. KIRBY: I would ask she be excused for that reason. She seemed a little emotional as she was talking to you about that particular aspect.

THE COURT: Seems like a very nice person, but I'm sure she's got a lot of problems there.

MR. GARCIA: I would want to keep her, Your Honor, for the following reasons.

THE COURT: You do or don't?

MR. GARCIA: I do. First of all, we have a very limited number of minorities in our jury. She's one of them.

Second, she talks I think very candidly about her [102] ability to judge. And based on the conversation you had with her, I believe that she could perform her duties quite well. She did mention that about the death in the family, but it appeared to me that her last comment was that she was still willing to participate. So I think she is able to serve as a juror at this time.

THE COURT: Well, I don't know there's any reason to strike her for cause. It does seem to me that she—she wants to be excused, and when she mentioned the death in the family she obviously had tears in her eyes and distressed about being here and involved in other people's problems. And so I but I won't strike her for cause. But on the other hand, as I say, I think there's reason that she could be excused for challenge, for that reason that she obviously is upset by her circumstances at present.

All right. How about Mr. Gilbert, number 31?

MR. GARCIA: I would move to excuse him for cause, Your Honor, based on his bias towards prosecutors.

MR. BARTOLOMEI: I marked him down as a challenge for cause, Your Honor.

THE COURT: Mr. Kirby.

MR. KIRBY: Your Honor, although he did have some opinions, he did indicate to you that he would follow your instructions and apply them accordingly.

THE COURT: I think he kind of fits in [103] Ms. Hanserd's position as well. You know about him and know his opinions. He said he did say that he could follow the instructions, and he said he—"I don't think I know what I would do," et cetera. So I think you have reasons to challenge him if you—strike him if you choose to do that, but again I think he fits in within Ms. Hanserd's parameters as well. I don't think—

MR. BARTOLOMEI: Your Honor, may I just one more thing regarding him?

THE COURT: Uh-huh.

MR. BARTOLOMEI: When he stated all things being equal, that to me indicated a disregard for Your Honor's instruction on the presumption of innocence, and that's the reason I marked him as a challenge for cause.

THE COURT: . Right. Well, then he came back and said yes, again that he would follow it and so forth. Again, he's—you know—about him and you can do what you wish to with him, but —

And then going on over, another one I marked was—Darryl Bingham couldn't set aside his personal opinion. Any reason to excuse that person, number 37—36?

MR. BARTOLOMEI: I have him down as a challenge for cause.

THE COURT: Any objection, Mr. Kirby?

MR. KIRBY: I'd like to, but I don't think I can.

[104] THE COURT: All right. I'll excuse him.

Those are the ones at least, as I went through, that I'd marked as—anyone else that you want to challenge for cause while we're in here?

MR. BARTOLOMEI: No.

THE COURT: I guess when the jury gets the instructions in the case, when they sit as jurors, they're going to know more about the gun and the involvement of the gun. What do you want to ask them? One of the questions I had on another questionnaire was:

"Do you have an opinion regarding the firearm laws of the United States?"

I suppose I'll ask them that, and then maybe someone will hold up their hand and then I'll talk to them about that. But I guess I didn't—I'll get your voir dire questions. What is it you want to ask about a gun? We know there was a gun there. Suggest—think the evidence is going to be that. What do you want to ask about the gun?

MR. KIRBY: I only wish to know whether any of them had strong—that strong of an opinion either way concerning the use of guns or the development of guns or whatever.

THE COURT: Do you have an opinion? And you think the next question: Should there be any restrictions on people's ability to buy, acquire, have firearms? Somebody holds up their hand. I suppose we recently had the Brady [105] Bill. It seems like we asked them questions about the Brady Bill before.

It seems to me the question more—the interest relates more to a circumstance. The case we had before recently was a felon in possession of a firearm, and so that really gets into kind of that as a factor.

But in any event, I'll ask them about what you said about firearms. I guess on my stand-up desk in there I have the voir dire questions. Could you just go in and get them? It should be right on the top there, Bobby, on the top of that desk someplace. I'll see what you've said.

How about anyone else who you wanted to challenge for cause?

MR. BARTOLOMEI: Your Honor, as far as the guns, I think the only question I would want to ask is the same as Mr. Kirby, whether anybody has had any experience with guns, or any experience that would make them feel strongly one way or the other about the presence of a gun in the trial. That would be it.

THE COURT: Anyone you wanted to challenge for cause that we haven't discussed, Mr. Kirby?

MR. KIRBY: I don't believe so, Your Honor.

THE COURT: Mr. Bartolomei.

MR. BARTOLOMEI: I don't believe so, Your Honor.

THE COURT: Mr. Garcia.

[106] MR. GARCIA: No, Your Honor.

THE COURT: Apart from the gun, and finally, "Okay, folks, we've talked to some of you individually. And again, any reason now any one of you, beyond what's been told us, you don't want to serve?" Anything else that we need to ask them about?

MR. KIRBY: Judge, did you read the witness list this morning?

THE COURT: No, I haven't. That's another good point.

The defendants have any witnesses or names that they want to give?

MR. BARTOLOMEI: No, Your Honor.

MR. GARCIA: No, Your Honor.

THE COURT: Remind me, I've got the witness list. Let's see here.

MR. KIRBY: Your Honor?

THE COURT: Uh-huh.

MR. KIRBY: There's one other area I'd like you to inquire. There may be an informant. There's an informant involved in the case that may or may not testify, but I'd just like you to ask our general question, which is number seven in our submitted.

THE COURT: Well, of course, I guess it would have been well to know that earlier too, because that's a question [107] I have started including in a questionnaire, if there is one.

MR. KIRBY: Oh.

THE COURT: Simply because I think again you get a much better answer on a questionnaire to that matter. But in any event, yes, I'll ask them.

MR. KIRBY: That's all I have.

THE COURT: Okay. Well, we'll ask about—someplace here I made—okay, we'll ask about the guns. We'll ask about the witnesses. We'll ask about informant. We'll ask about any other reason that beyond what's been told to us.

Now, our procedure is when we get done, I'll ask if you have any other questions to ask. You will get each—the defendants together have 10 strikes. The Government has six. We do it simultaneously. So the Government gets a list. They make their strikes. You get a list, Mr. Bartolomei and Mr. Garcia make their strikes. We'll have an alternate. So after you strike for the jury, there's 12 people that are going to be the jury. Then below those jurors, you can strike—each side has another strike. And you can't strike above the line for

somebody that's on the jury. And so we'll have—each side gets another strike for the alternate.

When we seat the jury, we mix the alternate in. We'll all know who it is. And when the trial is over, that [108] is the person who will be excused. We don't go through any other process of doing that. So that's how that'll work out.

About how long do you think it would be before you would get back to—before we have the jury come back?

MR. KIRBY: From my perspective, about 20 minutes.

THE COURT: Half hour? Why don't we say half an hour.

And if you and—if Mr. Bartolomei and Mr. Garcia want to do it in here with your clients, there's only one way out and that's the door here. And so you can come in and work in here if you want to with your clients; okay?

MR. KIRBY: That'll be fine.

THE COURT: All right.

MR. KIRBY: Thank you, Your Honor.

THE COURT: So that's what we'll do.

Anything else? Now we'll see how we are. That's going to get us—it's 2:00, 2:15. It'll be close enough, I

suppose. Everybody just prefer that we have our opening statements on Thursday?

MR. KIRBY: Yes, Your Honor. From my perspective, it's very brief.

THE COURT: Well, you know, we'll start at 11:00 on Thursday, give Mr. Garcia time to motor back leisurely from Mesa, and—

MR. GARCIA: Your Honor, the real issue and the [109] reason I wanted the time is because there's counsels flying in from across the—we may be able to resolve that matter with some time as well.

THE COURT: You mean you may not have that—

MR. GARCIA: We'll have the pretrial conference—

THE COURT: Oh.

MR. GARCIA: —but we may be able to eliminate an entire two-week trial by us all being there.

THE COURT: As long as it's not my two-week trial, I'm very disinterested.

THE CLERK: You excused Neal Sundeen, Darryl Bingham and Julie Kolomitz, those three?

THE COURT: Let's see here. We've got—

THE CLERK: Just want to be sure.

THE COURT: Yeah, we just pull them out now, huh? So we've got Kolomitz, Mr. Sundeen and who else did you say?

THE CLERK: Darryl Bingham.

THE COURT: And Mr. Bingham. Okay?

THE CLERK: Okay.

THE COURT: All right. Are we ready to go?

(Proceedings Concluded)

THE COURT: All right. We're going to excuse three people now, and then go ahead and ask a few more questions, and then take a recess while we—and everybody else will have to wait until we pick the jury and seat the jury, and [110] then the rest of you will be excused. So we're getting well along in the process.

We concluded, because of Mr. Sundeen's trial on Monday to excuse you, Mr. Sundeen. Thank you. And I noticed in the paper, also while you're leaving us, that your client and neighbor passed away.

JUROR/SUNDEEN: Yes.

THE COURT: So I know how hard you worked for his cause, and so I hated to see that. Thank you for coming.

JUROR/SUNDEEN: Thank you.

THE COURT: We will also excuse Ms. Kolomitz and also Mr. Bingham. And they're excused and do not have to stay.

The rest of you, just a few more questions or bits of information about our proceeding.

It's always difficult in a trial as well to know who may be called as witnesses, but let me read you some names that have been suggested as possible witnesses, and ask you if you know any of these people, and if so, simply hold up your hand and let us know.

Humberto Rodriguez, who's a drug enforcement agent James Bentley with the Drug Enforcement; Phillip Springer, same agency; Albert Reilly, Chuck Gulick who's with the DEA; Doug Grey who's an agent with the Alcohol, Tobacco & Firearms; Jose Isabel Gonzales-Riviera; Todd Davidson; Steven [111] Dauphin, D-A-U-P-H-I-N.

All right. Along that same line of possible witnesses, members of the jury, there may be in this case testimony of a person who acted as an informant for the Government and may have had some agreement with the Government regarding acting as an informant. And if so, you would be instructed at the end of the trial that the testimony of such a person should be considered, and that that's a circumstance for the jury to consider in judging their credibility and whether that testimony should be judged more carefully than the testimony of other witnesses.

Any of you believe that the Government should not use informants in an criminal case in order to assist in

the investigation or prosecution of crimes? And any of you believe you wouldn't be able to follow whatever the instructions we'd give you about how to judge and consider the testimony of a witness who had that background?

All right. Another—one of the charges of the case, and I think I mentioned it to you when I was describing the charges, is Count 3 in the indictment refers to the fact that there were allegedly two firearms at a location and that those firearms were there during and in relation to a drug-trafficking crime. And so that will be one of the counts that the jury has to consider in this case.

And so the general inquiry of you—let me ask, [112] how many of you folks have guns at home? Just hold up your hand to give us some idea of how many people have guns at home.

Let me ask anyone on the jury panel if you would hold up your hand if you do belong to any organization that advocates any restrictions on the right of people, citizens, ordinary citizens to have guns in their possession, assuming they're being carried lawfully and things like that? Any of you have any—belong to any organization that thinks there should be some restriction or qualification on the right of people generally to have firearms?

We recently had, I think, a lot of publicity in the newspaper about the Brady Bill in Congress, and I'm certainly not any expert on the Brady Bill. Seemingly a part of it was a requirement that persons who would—for a period of time, persons buying handguns, there

was a five-year (sic) waiting period. Any of you interested yourself particularly in the pros or cons of the Brady Bill and what it was intended to do?

With respect to guns themselves, and any of you have any opinions for or against guns that again would simply cause you to vote for or against guilty or not guilty in a case where the Government would prove beyond a reasonable doubt that a gun was there and you received instructions from the Court about how to consider that issue?

[113] All right. Any other questions by counsel? All right. Hearing none then, what we're going to do, members of the jury, it's five minutes after 2:00. We're going to give you kind of an early recess. And what we're going to do during that period of time, or what the lawyers will be doing, as I mentioned earlier, they have the right to go through, check their notes. Each side in a trial gets what are called a certain number of preemptory challenges that they can strike people for whatever good reasons that they may have.

Let me say also that the law is clear now in the United States that people cannot be taken off of a jury for reasons that are related simply to race, or religion or gender. And if it appears that that is happening or suspected of happening, then the Court inquires into that. The other side can object. So I want you to understand that that's how the law is now in the United States. People cannot strike all of one sex or race or whatever. You can't do that. And so that's not what they're going to be making their decisions about.

So we'll take a recess until 20 minutes of 3:00. And when you come back then at 20 minutes of 3:00, please just be seated in the back of the courtroom. You don't have to come up and be seated where you are. And then the people who have been selected to serve on our jury will be called, [114] and we'll ask again any reason you can't serve. If the people who are seated say they can, then we'll swear them in and excuse everybody else.

As you can tell, also, some of you mentioned you'd been called or been on other jury panels and you hadn't been selected or whatever. A good bit of the selection process, I'm sure as you can understand, is simply where you're seated, based upon the number of jurors there are on the panel and how far down in the panel the strikes extend, et cetera. So that's really what happens to a lot of folks. They're simply in the last 10 or 12 people on the jury, and—the jury panel and they're never really involved in the process.

On the other hand, you can understand why we need those folks here, because every jury panel is different, and their background and their personal experiences. And so you never know how many you're going to have. So that's how it works.

In any event now, with that little bit of history, why please be back at 20 minutes of 2:00—3:00—pardon me—20 minutes of 3:00, seated in the back of the courtroom and we'll get everybody on their way before too long.

So don't talk about the case still, don't think about it and don't share your experiences.

(Jury Panel Out at 2:12 p.m.)

[115] (Recess from 2:12 p.m. to 2:13 p.m.)

MR. KIRBY: I have no objection to—

THE COURT: To excusing him? All right.

MR. GARCIA: I would move to excuse him for cause, Your Honor.

THE COURT: Well, there's no cause in the sense that we're simply conveniencing him. He wants to be excused because of his work schedule. All right. So he's excused, and mark him off on your list, so when you go to make your strikes you don't have to look at him. All right?

MR. GARCIA: Thank you, Judge.

(Recess from 2:13 p.m. to 3:03 p.m.)

(Jury Room Proceedings at 2:45 p.m.)

MR. BARTOLOMEI: Your Honor, we had an unusually low number of minorities represented in this jury panel. And it was our unfortunate luck that the few Hispanics that were on the panel were at the very end. We didn't get a chance to really address those. But there were two potential black jurors, number 15, Mary Smith and number 29, Etoy Hanserd.

Now, with regards to Mary Smith, she indicated—there was no indication that she could not be fair and

impartial, and in fact I think it was to the contrary. And she even indicated that she wanted to see tougher drug laws and penalties for those involved in the sale of drugs—nothing to indicate that she could not follow Your Honor's [116] instructions, and yet we have a challenge from the Government.

Likewise, with regards to Etoy Hanserd, she was the shy potential juror that came in and spoke with us and answered our questions. And despite having grief for a recent loss in her family, indicated she could follow Your Honor's instructions and she would also be fair and impartial. And likewise, Your Honor, the Government has exercised a challenge there.

And that leaves us effectively with no minorities at all, and we question whether or not there was another reason for those challenges or striking minorities from the panel. I think it's incumbent upon the Government to show a valid reason for those challenges.

MR. GARCIA: Your Honor, I just merely join in the—Mr. Bartolomei's argument.

THE COURT: Mr. Kirby.

MR. KIRBY: Your Honor, as regards Ms. Smith, she indicated very early on that she had some employment problems. She had some finals coming up at South Mountain Community College. She'd indicated she already asked and apparently had been excused once for that particular reason. And so in exercising my preemptory, since she indicated a potential work problem, as we had with Mr. Sink and Ms. Kolomitz,

excused them for work-related problem and [117] whatnot, I exercised my strike on her.

THE COURT: And Ms. Hanserd.

MR. KIRBY: On Ms. Hanserd, as I indicated while we were in chambers or the jury room taking jurors one by one, my assessment of her was that the death in the family. She was the one who brought up she was still in bereavement. She seemed quite tearful when she discussed it, and I didn't think that it indicated an ability to perhaps deal with high-pressure matters that occur in jury deliberations. She seemed quite upset by this particular death in the family. And as I had mentioned then as I do now, I think that would —my assessment that would cause her difficulty in sitting and deliberating in this case.

THE COURT: Well, I'd mentioned earlier about Ms. Hanserd of my observations of her, that she was of course very nervous about of her responsibilities. I think her questionnaire indicated that she would—she really didn't want to be in a position where—or would find it difficult to make a judgment about other people.

More importantly, I think her concerns about her current circumstances and the fact that there has been the recent death in the family. And I think, as a matter of fact, she said there was still—the family was going through a period of bereavement. That she would like to be excused, and that—I think that Mr. Kirby's assessment of [118] her situation and her concerns about her circumstances is a reason to exercise a challenge for her. I don't think that implicates her or her race at all. She is a black African-American.

With respect to the other juror, I guess she told us that she'd been excused before at her request and was reluctant to ask to be excused again. She did ask to be excused. I think she said she would like to be excused, because they're in the finals now, and she's going to have to grade all of the papers that are generated through the final exam process.

I think on the other hand, that she can serve and was willing to serve, and I don't think that there's—for the reasons that have been stated, that there's an appropriate reason to exercise a preemptory challenge with respect to her. And so for that reason, failing anything else then, she will serve on our jury. And that would mean that our—so you can—and that would exclude then Christine Pelander as a juror; right, Ms. High-tower?

THE CLERK: Or she'd be the alternate.

THE COURT: And then, of course, that leaves us where we are on the alternate. And so there hasn't been a challenge. It would appear generally the defendants have struck nothing but white males; is that right?

MR. GARCIA: I do not believe so, Your Honor. I [119] believe we struck Reba Varela and Cynthia Gordon, Your Honor, the two females that I can think of off the top of my head.

THE COURT: Well, so what do we want to do now about our—to get an alternate? Do you want to

strike again for the alternate, or are you satisfied that—

The Government—one, two, three, four, five six. The Government didn't strike for an alternate, or there hasn't been a strike for an alternate?

MR. KIRBY: I have struck the alternate before this.

THE COURT: Oh, I see. Well, you struck down so far that it wouldn't make any difference.

MR. KIRBY: Well, now under the current setup.

THE COURT: Right. So I will—I guess the best thing to do is to let the parties strike again for an alternate. Is that satisfactory?

MR. KIRBY: Yes, fine.

THE COURT: So go strike for an alternate, and then come—or if you want to do it now or whatever, and then we'll do that; okay?

THE CLERK: She will not be the twelfth juror.

THE COURT: Well, she would be the first person that would be a prospective alternate.

THE CLERK: Right.

THE COURT: So the first prospective alternate [120] would now be Christine Pelander, and the next one would be Donald Gilbert, Arnold Riley, et cetera.

MR. GARCIA: Your Honor, Donald Gilbert has been—

THE COURT: Well, but—

MR. GARCIA: —has already been stricken.

THE COURT: Well, but the only reason he was as an alternate, and you're going to—

MR. GARCIA: He was stricken during our pre-emptories.

THE CLERK: Yeah, he was—this was a preemtory. The defendant struck him.

THE COURT: Oh, okay. Well, where are the alternate strikes?

THE CLERK: There weren't any. I gave them—

THE COURT: Well, so they haven't struck for the alternate yet.

THE CLERK: Actually the defense did. The defense struck James Allen.

THE COURT: Well, how did they do that?

THE CLERK: Because I gave them back the list.

THE COURT: Okay. And the defendants hadn't stricken for an alternate.

THE CLERK: The Government—did the Government strike for an alternate? I haven't seen the Government's list.

[121] MR. KIRBY: Yes. I struck Mr. Allen.

THE CLERK: Actually both of them struck.

THE COURT: Okay.

THE CLERK: This is the defense's strike for an alternate and this is the Government's strike, but this is prior to me—

THE COURT: All right. Now well let's go back again. And you're going to strike—

MR. GARCIA: Your Honor, as I understand it, the next three people would be Christine Pelander, Arnold Riley and Julie Ball.

THE COURT: Right. That agreeable?

MR. KIRBY: Yeah.

THE COURT: All right. So you can strike for those people, and then—

THE CLERK: So the alternate would be—

MALE VOICE: Riley.

THE CLERK: —Arnold Riley, be the thirteenth juror.

THE COURT: So why don't you read us off now, Bobby, who the jurors will be.

THE CLERK: Okay. Number one would be Robert Johann.

THE COURT: Who, Johann?

THE CLERK: Johann, J-O-H-A-N-N.

[122] THE COURT: Okay.

THE CLERK: Number two is Martin Johnson; number three is Joel Schotz; number four is Mary Smith; number five is Merle Baker; number six is Barbara Schaller; number seven is Joe Bollinger; number eight is Richard Conn; number nine is Susan Chmielewski; number 10 is Darvin Finck; number 11 is Mary Simmonds; number 12 is Martin Welter, and the alternate is number 32, Arnold Riley.

THE COURT: All right. Any objection now to any of those jurors?

MR. GARCIA: None from us.

THE COURT: Any further objection to our procedures?

MR. KIRBY: No, Your Honor.

THE COURT: All right. Very well then, the clerk will call those names when we go back in. They'll come up, be seated. I'll ask them again any reason you can't serve. If they say no, we'll swear them in. We'll excuse

everybody else and then we will recess until Thursday morning at 11:00. Okay?

MR. GARCIA: Thank you, Your Honor.

MR. KIRBY: Thank you, Your Honor.

(Recess)

THE COURT: All right. Then the clerk will please call the names of those persons who have been selected to [123] serve on our jury. And as I say, as your names are called, just come up, and the first one be seated in the back row. And again we'll keep the seat behind the post vacant so that when it gets to that time, the next person will just come up and be seated in the front row. So the clerk will call the roll.

THE CLERK: Robert Johann, Arnold Riley, Martin Johnson, Joel Schotz, Mary Smith, Merle Baker, Barbara Schaller, Joe Bollinger, Richard Conn, Susan Chmielewski, Darvin Finck, Mary Simmonds, Martin Welter.

THE COURT: Let me just—

THE CLERK: I'm sorry. It's Martin Johnson.

THE COURT: Martin Johnson? Yeah.

Let me just read the names, and then we'll see how they work out. Robert Johann, Martin Johnson, Joel Schotz, Mary Smith, Merle Baker, Barbara Schaller, Joe Bollinger, Richard Conn, Susan—we know Susan. Well, I didn't have it spelled out right. Darwin (sic) Finck, Mary Simmonds, Martha (sic) Welten (sic),

Martin Welten (sic) and Arnold Riley. Who are we missing?

MR. BARTOLOMEI: Finck didn't show up.

THE COURT: Huh?

MR. BARTOLOMEI: Darvin Finck, I think, is missing, Your Honor.

THE COURT: Darwin (sic) Finck. Present? Darwin? [124] Where did Darwin go?

THE COURT: The marshals want to check the men's room to see if there's anybody that's not here now?

No one there. Bobby?

THE CLERK: I was just going to—

THE COURT: Pardon?

THE CLERK: I just asked the jury commissioner to see if he had gone down there.

THE COURT: How about having her check the cafeteria?

THE COURT: All right. Let me see counsel for a minute.

(Side Bar Conference)

MR. GARCIA: Your Honor, my thoughts are that the next three people on the list are James Allen, Francisco Olivas and Doris Morlan, and that we each have one strike, and that that person becomes a juror, not an alternate.

THE COURT: Well, I think what I'm going to do arguably is just go with who we've got, and I'll tell the marshals to locate Mr. Finck and have him here Thursday. How about that? We're getting too many playing around with alternates and really just picking people now after everybody knows what else is happening. And I just—I see that as a kind of a problem.

MR. KIRBY: I don't have a problem with your [125] solution if you will—when he shows up on Thursday, you have an opportunity to inquire what happened to him. I don't want necessarily somebody sitting on there that's going to poison the trial if he's got some particular binge or something. But I'd like to find out what happened to him.

THE COURT: Well, we'll just go with 12 and tell them they have to be here next week. If they lose, we'll have to have a mistrial, unless they're deliberating.

MR. KIRBY: Go with 11.

THE COURT: We can't go with 11 unless they're deliberating.

MR. GARCIA: I would again just move that we go to the next three just like we did a moment ago. And I think the other advantage of doing that, Your Honor, is

that also gets us now into the area where we finally in this jury panel have a Hispanic.

THE COURT: Well, that's all your point is, you see, Mr. Garcia. That's exactly what I object to in this process, is maneuvering like we're doing.

MR. GARCIA: Your Honor, I didn't send Mr. Finck out.

THE COURT: I know that, I know. But in any event, I'm just going to go with the 12 we've got.

MR. BARTOLOMEI: It's a sure enough thing we should be able to deal with that.

[126] MR. GARCIA: Want to do that, Your Honor?

THE COURT: Yeah, we'll do that, and we'll get him back. And if there's some problem, we'll still just go with 12.

(End of Side Bar Conference)

THE COURT: All right. Twelve of you are seated in the jury box now. Is there any reason why any one of you now can't fairly and impartially serve as a juror in the case? All right. The clerk will swear the jury.

(Jury sworn)

THE COURT: All right. Members of the jury panel now seated in front of me, we're going to excuse you. Your time with us has ended. Thank you very much for coming and being here, and we appreciate

your time and attention. And as I've said earlier, I hope that you'll have another opportunity to come back, whether on this panel this month or at some other time, and that you'll come and have a chance to serve. Because if you do that, I'm sure you'll understand a whole lot more about what citizenship means and what the responsibilities of being a juror are. So we'll excuse you now. Thank you very much for being with us.

All right. Those of you now who are on our jury, as I've told you, we're going to take a recess until 11:00 on Thursday, have you back then. We'll go—have the opening statements, take a lunch break and start the evidence on [127] Thursday as well.

And let me remind you again now not to talk about the case. Don't discuss it when you go home or wherever you go today, work, or elsewhere. People ask you where you are and what you're doing, simply tell them that you're on a jury in federal court and that you're not able to discuss with them whether it's a civil or a criminal case or what it's about. And if there's anything in the newspaper about something similar or anything else, just put it aside and read it or talk about it after the trial is over.

We also have 12 jurors, and that's what we need. So it really puts an additional burden on each of you to be with us on Thursday. If you have some problem, illness or something else, why call in and let us know ahead of time, if you can ahead of time. But it's really important now that we have to have you all here. We don't have the luxury of, at least at this moment, of having an alternate.

And so with that in mind, why remember to be back not tomorrow, but at 11:00 on Thursday, and we will need you surely on Thursday and Friday and possibly on Monday. So keep that in mind. We'll see you then. So you're excused then until Thursday at 11:00. Thank you.

All right. Be seated for a second while they get started. We're going to ask the jury commissioner to call Mr. Finck at his phone number where we catch him and see if [128] we can get him back today. And if we can, we'll do that, and we'll call you so that you can come back and we can find out what his circumstances are and about his ability to serve as a juror, et cetera. So we'll try to do that and try to get it done today. If not, we'll have him here on Thursday to discuss the matter; okay? All right.

MR. GARCIA: Thank you, Your Honor.

THE COURT: Uh-huh. And I would encourage everyone to be here at quarter of 11:00 so that we can discuss any of our problems or other matters before we do get started. So Mr. Garcia, we'd hope that you would be able to be with us at that time as well.

MR. GARCIA: I'll make every effort, Your Honor.

THE COURT: Thank you.

THE CLERK: May I have your questionnaires, please?

THE COURT: And turn back in your questionnaires, if you would, please, so that we can have those.

If we need Mr. Finck, why we can keep that around, a copy of it.

(Proceedings Concluded at 3:17 p.m.)

—oo—

[129]

C E R T I F I C A T E

I (we) certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Dated: May 31, 1994

/s/ HAROLD FERGUSON
HAROLD FERGUSON

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

No. CR 93-284-PHX-EHC

UNITED STATES OF AMERICA, PLAINTIFF
against

ABEL SALAZAR AND
CELSO ORGANISTA-DORANTES, DEFENDANTS

[Filed: Dec. 15, 1993]

JURY LIST

NAMES OF JURORS	EXCUSED BY			
	PLAINTIFF		DEFENDANT	
	C	PER	C	PER
1. Alvin Mann			X	
2. John Kelly			X	
3. Robert Johann				
4. Neal Sundeen				X
5. Cynthia Gordon			X	
6. Silvio Vaninetti			X	
7. Robert Rendek			X	
8. Martin Johnson				
9. Christopher Lanford	X			
10. Ronald Eckard	X			
11. Joe Schotz				
12. Reba Varela			X	
13. Robert Dunst	X			

NAMES OF JURORS	EXCUSED BY			
	PLAINTIFF		DEFENDANT	
	C	PER	C	PER
14. Edward Sink				X
15. Mary Smith			[X]*	
16. Mark Gilmore				X
17. Merle Baker				
18. Robert Schroeder				X
19. Barbara Schaller				
20. Julie Kolomitz				X
21. Dennis Hultz			X	
22. Joe Bollinger				
23. Richard Conn				
24. Susan Chmielewski				
25. Darvin Finck				
26. Mary Simmonds				
27. Martin Welter				
28. Kimberly Keil				X
29. Etoy Hanserd			X	
30. Christine Pelander			X	
31. Donald Gilbert				X
32. Arnold Riley				
33. Julie Ball				X
34. James Allen			X*	X*

* The government's peremptory challenge to juror No. 15, Ms. Smith, was disallowed by the court when it granted the defense objection to that challenge under Batson v. Kentucky, 476 U.S. 79 (1986). See *supra*, pp. 175-178. The peremptory challenge used by the government on Ms. Smith was forfeited. Originally, the government and the defense each used their one peremptory challenge designated for the selection of the alternative juror (*see supra*, p. 167) on juror No. 34, Mr. Allen. See *supra*, p. 181. When Ms. Smith was placed on the jury, juror No. 30, Ms. Pelander, who

35. Francisco Olivas				
36. Darryl Bingham				X
37. Dorisa Morlan				
38. Shuhui Fan				
39. Clifford Schlueter				
40. Jeffrey Smith				
41. Cynthia Wineman				
42. Jeannie Collins				
EXCUSED BY				
NAMES OF JURORS	PLAINTIFF	DEFENDANT	COURT	
	C	PER	C	PER
43. Georgia Lindsey				
44. Bonnie Baker				
45. John Velez				

had not originally been struck from the jury, was no longer the twelfth juror. See *supra*, p. 179. The court then granted both the government and the defense one additional challenge to select an alternative among the next three available jurors, No. 30, Ms. Pelander, No. 32, Mr. Riley, and No. 33, Ms. Ball. See *supra*, p. 181. The government then struck Ms. Pelander and the defense then struck Ms. Ball. *Ibid.*

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

No. CR 93-284-PHX-EHC

THE UNITED STATES, PLAINTIFF

vs.

ABEL MARTINEZ-SALAZAR,
CELSO ORGANISTA-DORANTES, DEFENDANTS

TRANSCRIPT OF JURY TRIAL

[Index omitted]

[3] December 9, 1993

THE CLERK: You may be seated.

MR. GARCIA: Your Honor, to date—to the moment we are yet with an interpreter. (sic)

THE COURT: I'd like to proceed in the meantime.

MR. GARCIA: I'm not sure if I'm supposed to start this, Your Honor, but prior to beginning the trial at 11:00 today, I am going to move to strike Mr. Finck as a juror. Additionally I'm going to move this Court for a mistrial based on how this jury was constituted.

As to my first motion to striking Mr. Finck, I was in jury selection yesterday in another matter in front of Judge Broomfield when Mr. Finck was called to the panel. And at that time Mr. Finck walked in and saw me also defending another individual in another narcotics matter.

THE COURT: Well, when did this all occur in the case?

MR. GARCIA: This occurred yesterday, Your Honor.

THE COURT: I understand. Where in the proceedings? What time of the day?

MR. GARCIA: It occurred during jury selection, Your Honor.

THE COURT: All right. Well, where in the jury selection?

MR. GARCIA: Prior to the jury selection, he was [4] brought in —

THE COURT: Well, how would he know what you were there for?

MR. GARCIA: Your Honor, the point that I am making is —

THE COURT: Well, how would he know what you were there for, Mr. Garcia?

MR. GARCIA: Your Honor, I am not going to speculate as to what is in Mr. Finck's mind, however there is the —

THE COURT: Well, how would he know?

MR. GARCIA: Your Honor, I think he did see me at a defense table with two individuals who were defendants.

THE COURT: Well, he wouldn't know you were there for a drug case, a gun case, a civil case or whatever.

MR. GARCIA: Yes, but it is also possible, and I'm not going to speculate as to what Mr. Finck thinks, and we can ask him if you would like, but I will say that the possibility has now arisen that Mr. Finck may now infer that I am a big-time defense attorney who is defending multiple individuals in multiple-defendant cases.

THE COURT: That's absurd.

MR. GARCIA: Your Honor —

THE COURT: We have cases that go to trial continually. Lawyers try cases several times before the same [5]—in the same panel, they may come in and not get selected and come back and get selected again. So you see, Mr. Garcia, that's just wild speculation, and not only that, but you haven't told me anything that suggests that the jury panel, at the time you saw Mr. Finck there, knew what kind of a case it was or anything else.

MR. GARCIA: That is correct, Your Honor, but I am also noting—I am making a record in case there is an appeal in this matter, and I think I would be remiss—

THE COURT: Well, you better have facts before you make a record, Mr.—

MR. GARCIA: —remiss in my duties if I didn't—

THE COURT: Mr. Garcia, when I speak you stop. And you'd better have a record before you make it. You'd better have some facts before you make it.

MR. GARCIA: The facts are, Your Honor, that Mr. Finck chose to leave the jury selection process in this matter without instruction by this Court. Additionally—

THE COURT: Let's wait here. Now we have the interpreter coming.

MR. GARCIA: As I was saying, earlier, just to bring the clients up to speed, Your Honor, I am making two motions today, one to strike Mr. Finck individually, and one to strike (sic) for a mistrial because of the composition of the jury.

[6] As for the facts regarding Mr. Finck, Mr. Finck was instructed by this Court not to leave the courtroom. Mr. Finck chose to do so despite the Court's instructions. Mr. Finck has already demonstrated that he is incapable of properly following the instructions of this Court by leaving the courtroom.

Furthermore, my clients may have been prejudiced by the fact that Mr. Finck was called, Mr. Finck was called in another jury pool in which I was a defendant (sic). I will not speculate as—

THE COURT: You were not a defendant.

MR. GARCIA: Pardon me?

THE COURT: You said you were a defendant. You're not a defendant.

MR. GARCIA: Where I was representing the defendant, Your Honor. Excuse me. But for all we know, Mr. Finck could've thought I was the defendant. I am not going to speculate as to what Mr. Finck thinks, however I'm bringing those facts to the Court's attention because I believe he should be stricken for his inability to follow your instructions, and furthermore because of the possible prejudicial impact of his viewing me in another matter.

Second, Your Honor, I respectfully disagree with the Court as to your characterizations of what we attempted to do on Tuesday during our jury selection. I did not [7] attempt to, quote, manipulate the system, unquote. I was only advocating for my client as I best can, given the limits of my talents.

Now the situation was as follows: Mr. Finck had failed to reappear. The next three individuals that should have been called for us to determine the procedure that had been set up just moments earlier, were juror number 34, Mr. James Allen, juror number 35, Mr.

Francisco Olivas, and a juror number 36—37, Doris Morlan. Based on my—

THE COURT: I thought Mr. Olivas was the third one.

MR. GARCIA: He was the second, Your Honor. It would've been number 34, James Allen; number 35, Francisco Olivas; and number 37, Doris Morlan. Mr. Allen, during the jury selection, admitted that he was a recovering alcoholic, and he also has an attorney brother in the Securities Exchange Commission. We would've used those reasons to strike Mr. Allen. That would have left the Government with either Ms. Morlan or Mr. Olivas.

Mr. Olivas made no comments whatsoever that would have formed the basis for him to be stricken by the Government. Likewise, if he in fact had been stricken by the Government, we would have made another Bassett challenge because he would have been the only Hispanic on the pool.

What the effect of Your Honor's refusing to allow us to go forward and choose an alternate for Mr. Finck at [8] that time has done is, if—

THE COURT: Well, you didn't want an alternate, you wanted that person to move up and take priority over the person who was the alternate and selected previously, that's what you wanted—

MR. GARCIA: Your Honor—

THE COURT: —Mr. Garcia.

MR. GARCIA: —if that is the understanding of the Court, then I apologize. We were—

THE COURT: That's what you—pardon me. That's what you said expressly.

MR. GARCIA: Well, we—

THE COURT: You said you wanted him seated as a juror, not as an alternate.

MR. GARCIA: Well, the alternate had already been selected, Your Honor.

THE COURT: No, the alternate was ahead of that person, Mr. Garcia. Let's—you got anything else to say?

MR. GARCIA: The effect of either not allowing us to choose another juror or to choose another alternate has the effect of, should this matter go to trial with this jury, and an individual is for some reason unable to deliberate, the next person to deliberate would have been a Hispanic, therefore the Court's unwillingness to allow us to select another individual, despite the fact that Mr. Finck had [9] already demonstrated to this Court that he was unable to follow the Court's instructions—

THE COURT: You've said that so many times now, let's keep going.

MR. GARCIA: —I think is prejudicial and is basis for a mistrial, and therefore I believe we need to reconstitute a new jury panel and select a new jury.

THE COURT: Mr. Bartolomei, you object to Mr. Finck being brought in and seated?

MR. BARTOLOMEI: No, I don't, Your Honor. I have to respectfully disagree with my co-counsel. I've never seen a case in either the Second Circuit where I practice or in the Ninth Circuit, where being even a popular defense attorney has been grounds for a mistrial or for finding a juror ineligible. So I must respectfully disagree with co-counsel.

THE COURT: Well, Mr.—what's your thoughts, Mr. Kirby? I guess in the final analysis, if Mr. Garcia objects to Mr. Finck sitting on the jury, I'm just going to leave him off the jury, and we've got the next person who was the alternate, who was selected properly as the alternate. Mr. Finck isn't on the jury, and we will have Mr. Riley who was selected as the alternate will be a juror, and we will not have an alternate. That's what I said the other day and that's what we will continue to do.

[10] MR. KIRBY: Your Honor, either situation is fine with me. I think just perhaps you might just want to inquire of Mr. Finck if there is anything to—number one, you know, what happened on Tuesday, and did he make any note of the fact that he may have seen Mr. Garcia yesterday.

THE COURT: Well, I don't know when Mr. Finck left, and if I—Ms. Hightower talked to him, and since

Mr. Garcia objects to Mr. Finck being on the jury, I'm going to just not put him on the jury, and we've got an alternate, and as far as I can see, everything is just—is in accordance with law.

My understanding is that Mr. Finck thought his name was called when I excused the three people that I did before—and the only reason, again, that I'm inclined to just not put him on the jury, I asked a couple of additional questions after I excused those three people. And so giving consideration to that fact, I'm simply going to go where I was the other day and we'll go with 12 jurors, and they'll be here, and they're here now, and that means at 11:00 we're going to have—I'll read a few instructions to them, generally about life and coming to court on time, and then we'll go from there, have our opening statements. Mr. Kirby.

MR. KIRBY: Your Honor, it's my intention, if all goes correct, to play one or two tape recordings, and you know about the transcripts. I don't know the Court's [11] preference. I would like permission either to have the agents or the court interpreter to signal the jury when to turn a page. The tapes are in Spanish, transcripts of course are in English. And in order to facilitate the jury as to knowing where they are so that they can kind of at least keep pace with the tones and inflections in the tape, I would ask that either the agent or the court interpreter give them the hi sign that it's time to turn the page.

THE COURT: Why don't we depend on the interpreter to do that, Mr. Velasco or Ms. VanDuzer.

MR. KIRBY: Thank you.

THE COURT: You can do that, Mr.—you've done that before, Mr. Velasco.

THE INTERPRETER: Yes, Your Honor.

THE COURT: All right. Any objection to that?

THE INTERPRETER: None at all, sir.

THE COURT: All right. Then we'll go back home to our other courtroom and be ready to go all in good spirits and the best of good humor.

All right. All right. Thank you very much.

And so I'm going to have Bobbi just excuse Mr. Finck. We had him come back down, but considering the fact that arguably he left with—when those three left, and the fact that there were a couple of extra questions, why I'm just going to leave him off.

[12] MR. GARCIA: Your Honor, after consulting with some people, I feel I must state something for the record, whether it impacts on the case or not. But I need to place on the record that I am presently in simultaneous trials here in federal court selecting jury on one day in one case, jury in another in another, and then going from one court to the other as far as the proceedings. That's—

THE COURT: But when are you going back to Judge Broomfield?

MR. GARCIA: I'm going back this afternoon, Your Honor.

THE COURT: Well, we're going to be here all afternoon.

MR. GARCIA: They're waiting for me as soon as we're done, I'm—

THE COURT: Well, we're going to go until 4:00 today.

MR. GARCIA: They're aware of that, Your Honor. I'll—

THE COURT: Well, and let me just say one other thing, perhaps I'm wrong, but in talking at some time with Judge Broomfield, he indicated that you were agreeable to that.

MR. GARCIA: That is correct, Your Honor, and I'm not saying that I'm not agreeable. I'm saying that I need—

[13] THE COURT: Well, then, if you're agreeable, fine, if not, you go down and talk to Judge Broomfield, because we started our trial first. And if you have a point to make, you make it with Judge Broomfield.

MR. GARCIA: Your Honor, I am not complaining. I have been advised that for a record, in case there is an issue of ineffective assistance of counsel, I need to make that record that I am in fact participating in two trials at the same time.

THE COURT: If you had asked to be in one trial and only one trial, you could've addressed that to me, or you could've addressed it to Judge Broomfield, but my understanding is you went before Judge Broomfield and told him you were willing and able to do that.

MR. GARCIA: I have—

THE COURT: And having said that to Judge Broomfield, if you want to have further discussions, you have them with Judge Broomfield.

MR. GARCIA: Thank you, Your Honor.

(Recess from 10:44 a.m. to 11:05 a.m.)

THE CLERK: Come to order. You may be seated.

THE COURT: All right then, ready for the jury. All right. When the jury comes in, I have just a few general instructions to read to them and then we will have the opening statements.

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